2011

Negotiated Regulation: The Ohio Livestock Care Standards Board as a Model Regulatory Process

Caroline E. Wellman

Wright State University

Follow this and additional works at: https://corescholar.libraries.wright.edu/etd_all

Part of the Public Affairs, Public Policy and Public Administration Commons

Repository Citation

Wellman, Caroline E., "Negotiated Regulation: The Ohio Livestock Care Standards Board as a Model Regulatory Process" (2011). Browse all Theses and Dissertations. 424.

https://corescholar.libraries.wright.edu/etd_all/424

This Thesis is brought to you for free and open access by the Theses and Dissertations at CORE Scholar. It has been accepted for inclusion in Browse all Theses and Dissertations by an authorized administrator of CORE Scholar. For more information, please contact corescholar@www.libraries.wright.edu, library-corescholar@wright.edu.
NEGOTIATED REGULATION: THE OHIO LIVESTOCK CARE STANDARDS
BOARD AS A MODEL REGULATORY PROCESS

A thesis proposal submitted in partial fulfillment
of the requirements for the degree of
Master of Public Administration

By

CAROLINE E. WELLMAN
B.S., U.S. Air Force Academy, 2002

2011
Wright State University
I HEREBY RECOMMEND THAT THE THESIS PREPARED UNDER MY SUPERVISION BY Caroline E. Wellman ENTITLED Negotiated Regulation: The Ohio Livestock Care Standards Board as a Model Regulatory Process BE ACCEPTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF Master of Public Administration.

______________________________
Myron A. Levine, Ph.D.
Thesis Director

______________________________
Jack L. Dustin, Ph.D.
Chair
Department of Urban Affairs
and Geography
College of Liberal Arts

Committee on Final Examination

______________________________
Myron A. Levine, Ph.D.

______________________________
Jack L. Dustin, Ph.D.

______________________________
Jerri Killian, Ph.D.

______________________________
Andrew T. Hsu, Ph.D.
Dean, School of Graduate Studies
Wellman, Caroline E. M.P.A., Master of Public Administration Program, Department of Urban Affairs and Geography, Wright State University, 2011. Negotiated Regulation: The Ohio Livestock Care Standards Board as a Model Regulatory Process.

Using a comparative framework and based on interviews with the primary actors involved in the debate for and against humane farm animal standards in Ohio, this thesis examines the roles of special and public interest groups, bureaucrats, technocrats, and the public in the rulemaking process of the Ohio Livestock Care Standards Board. This study finds that the creation of the board as a policy solution was likely impossible without the efforts of a policy entrepreneur and a “fixer;” that the board’s relevance relies on a problem-setting approach to developing standards that includes a multitude of interests; and that continued public interest group pressure prevents the board from being captured by special interests. The author concludes that Ohio’s approach, slightly modified, can be used as a model for other states and that a collaborative process, accountable to the public, can result in strong public policy recommendations even when interests seem divergent.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I. Interest groups and technocrats in direct democracy and rulemaking</strong></td>
<td>1</td>
</tr>
<tr>
<td>Farm animal welfare policy today</td>
<td>4</td>
</tr>
<tr>
<td>Direct democracy in the United States</td>
<td>5</td>
</tr>
<tr>
<td>Direct democracy in practice</td>
<td>7</td>
</tr>
<tr>
<td>Critiques of direct democracy</td>
<td>10</td>
</tr>
<tr>
<td>After Election Day: implementing initiatives and referenda</td>
<td>14</td>
</tr>
<tr>
<td>Interest groups and direct democracy</td>
<td>17</td>
</tr>
<tr>
<td>Technocrats and interest groups: Shaping public policy</td>
<td>19</td>
</tr>
<tr>
<td>Government regulation and regulated industries</td>
<td>23</td>
</tr>
<tr>
<td><strong>II. Setting the scene for humane livestock standards in Ohio</strong></td>
<td>27</td>
</tr>
<tr>
<td>Blazing the trail for farm animal welfare: Florida, Arizona and Oregon</td>
<td>30</td>
</tr>
<tr>
<td>A movement gaining momentum: California</td>
<td>32</td>
</tr>
<tr>
<td>Compromise in Colorado and Michigan</td>
<td>35</td>
</tr>
<tr>
<td>Board creation abounds</td>
<td>37</td>
</tr>
<tr>
<td><strong>III. Ohio’s approach to humane farm animal policy</strong></td>
<td>41</td>
</tr>
<tr>
<td>The Ohio Livestock Care Standards Board</td>
<td>42</td>
</tr>
<tr>
<td>Giving the board time to work</td>
<td>44</td>
</tr>
<tr>
<td>Entrepreneurs and fixers</td>
<td>47</td>
</tr>
<tr>
<td>Expert influence</td>
<td>52</td>
</tr>
<tr>
<td>Comprehensive approach</td>
<td>55</td>
</tr>
<tr>
<td>A choir of voices</td>
<td>58</td>
</tr>
</tbody>
</table>
LIST OF FIGURES

<table>
<thead>
<tr>
<th>Figure</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Ohio’s Livestock Regulatory Process and Key Players</td>
<td>77</td>
</tr>
<tr>
<td>2. Summary of Public Oral and Written Comments from Ohio Livestock Care Standards Board Meetings, June 15 to November 2, 2010</td>
<td>92</td>
</tr>
<tr>
<td>3. Ohio Livestock Care Standards Board’s Process Design for Standard Development</td>
<td>96</td>
</tr>
</tbody>
</table>
# LIST OF TABLES

<table>
<thead>
<tr>
<th>Table</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Agricultural Establishment</td>
<td>28</td>
</tr>
<tr>
<td>2. Ohio Livestock Care Standards Board Membership Summary</td>
<td>44</td>
</tr>
<tr>
<td>3. Ohio Livestock Care Standards Board Technical Research Advisory Committee</td>
<td>54</td>
</tr>
<tr>
<td>4. People with Whom the Author Conducted Interviews</td>
<td>88</td>
</tr>
<tr>
<td>5. Campaign Contributions from Agricultural or Agriculture-Related Industries by Dollar Amount and As Percentage of Total Contributions for Select Members of 111&lt;sup&gt;th&lt;/sup&gt; U.S. Congress</td>
<td>89</td>
</tr>
</tbody>
</table>
I. INTEREST GROUPS AND TECHNOCRATS IN DIRECT DEMOCRACY AND RULEMAKING

At its most basic, the problems of public administration are how best to balance bureaucracy and democracy, politics and administration, and ultimately, efficiency and responsiveness (Denhardt and Denhardt, 16-20). In short, who gets what and how. The debate over how best to develop and implement humane livestock standards, or farm animal welfare policy, is no exception. Striking the balance between the initiative process and attempts to preempt it; between the emotion and politics of humane farm animal treatment and how best to guide related decisions; and how to take into consideration the economic and social implications of stricter standards while being responsive to shifting consumer values is at the heart of the state-level debate about farm animal welfare policy, legislation and governance. This thesis examines the approach Ohio has taken in developing farm animal welfare policy, compares it to what has occurred in other states, and attempts to define a model that other states may follow in their attempts to develop processes to address the expanding discussion on farm animal welfare treatment standards. Ultimately, the recommended model should be the approach that best balances bureaucracy with democracy and efficiency with responsiveness.

What follows is an examination of the role of the initiative and referendum process in American politics and state-level humane livestock standard legislation; a discussion of how industry regulation is developed; a look at the processes and major political players in multiple states’ debate over farm animal welfare policy (including
economic, public and special interest groups); the role of money and the media in direct
democratic institutions; and an examination of how technocratic decision making and
democratic principles might be reconciled through the use of participatory problem
setting, collaborative network management, and direct democracy. A closer look at how
states have balanced public expectations of the initiative process, pressure for humane
livestock standards, agricultural industry interests, and the impact of farm economic
policy can inform Ohio’s approach, and that of other states, to the development of
livestock treatment standards at the state level. Additionally, states facing future direct
democracy actions regarding the issue of humane livestock standards or exploring
prescriptive political action in response to the growing pressure for such standards may
find the recommendation of a model or “best practice” for defining and implementing
regulatory standards that address the complicated subject useful.

In particular, the focus of this paper is Ohio’s approach to developing humane
livestock standards in comparison to other states who faced the issue before or
simultaneously to Ohio. In some states, a ballot initiative was used to amend the state
constitution to include minimum livestock standards, while in other states a popular
initiative created laws defining minimum livestock housing standards. In a few states,
the legislature took action to create standards. Still, in other states, lawmakers and
interest groups worked together to avoid a ballot initiative that would likely prove costly
for both sides of the issue. Ohio’s approach to discussing and developing humane
livestock standards seems to have borrowed from previous states’ approaches, but the
process it has ended up with appears to be a collaborative engagement of multiple
interested parties in discussions to develop more comprehensive standards than the states
who tackled the issue before it by addressing more than just housing standards. After power plays by the agricultural establishment, working with the legislature and the governor’s office, to preempt a popular initiative spearheaded by the Humane Society of the United States, the Ohio public approved a legislative referendum in 2009 to create a body to review Ohio’s livestock care standards and develop new ones where necessary. But in 2010, after the Humane Society demonstrated it had the popular support to win a fall initiative campaign forcing the Ohio Livestock Care Standards Board to adopt certain standards, the governor’s policy advisor for agricultural policy stepped in to mediate discussions between Ohio’s agricultural establishment and the Humane Society. What resulted from those discussions was an agreement between all parties to ask the board to consider the issues most pertinent to the ballot initiative first and to give the board time to develop meaningful, comprehensive standards without the continually renewed threat of a ballot initiative. Ohio’s path to a functioning, focused Livestock Care Standards Board had many twists and turns, but the board, which includes a multitude of interests in the discussion and has the time it needs to develop comprehensive standards, may be the best model yet for other states who face the complicated issue of defining what standards are or are not acceptable for the rearing of livestock in their states.

Chapter 1 of this thesis will examine the literature underpinning the role of interest groups, technocrats and bureaucrats in rulemaking, regulation and direct democracy. Chapter 2 examines the politics and processes behind the creation of humane farm animal welfare standards, paying particular attention to Florida, Arizona, Oregon, California, Colorado and Michigan. A detailed analysis of Ohio’s approach to farm animal welfare policy development follows in Chapter 3, while recommendations for
improving upon Ohio’s process in public administration attempts to define minimum standards agriculture and other regulated industries are presented in Chapter 4.

FARM ANIMAL WELFARE POLICY TODAY

Starting in 2002, the Humane Society of the United States began supporting citizen-led legislative efforts, usually by way of the initiative, that not only called for more humane livestock standards in the raising of animals used for food, but defined specific limitations on the care of farm animals. In 2002, Florida passed the “Animal Cruelty Amendment” to the state constitution.∗ No state faced a similar issue until 2006, when the Humane Society again backed an initiative in Arizona. In 2007, the legislature in Oregon adopted farm animal welfare legislation; however, since the passage of 2008’s Proposition 2 in California, the movement has expanded rapidly. Colorado took up the issue in 2008; Georgia, South Carolina, Massachusetts, Maine, Michigan and Ohio in 2009; and Oklahoma, West Virginia, Indiana, Missouri, Nebraska, South Dakota, Kentucky, Vermont, and Rhode Island in 2010 (AgRights Coalition; DVM Newsmagazine February 5, 2010). The growth in the number of states dealing with the issue has also prompted the re-introduction of federal farm animal welfare legislation (U.S. Congress March 2, 2010).

Public opinion surveys revealing a growing preference for humanely raised food seem to indicate public support for farm animal welfare legislation and policy (Lusk, et

∗ Interestingly, the verbiage of the 2002 Florida constitutional amendment specifically says the amendment is being adopted “to prevent cruelty to animals and as recommended by The Humane Society of the United States” (italics added). To date, no other legislation, initiative or referendum about farm animal welfare has credited HSUS with sponsoring the legislation, preferring to focus on the efforts of state-level political action committees dedicated to the issue.
Interest groups have used preferences expressed in those surveys to call for improved livestock treatment standards and farm animal welfare policies at the state level despite the potential problems such policies might bring to the agricultural economic market, an identified lack of replicable scientific support for improved welfare standards, debate over the validity of research that does exist, and inertia from policymakers at the federal level. Yet the public interest group-led movement for more humane livestock standards seems to be gaining momentum. The tension among the economics of farm animal welfare policies, the change in value preferences such policies imply, a reliance on scientific data to support policy changes, and the friction between democratic principles and the appearance of them creates a dramatic policy making field where institutions, processes, groups, and individuals can greatly influence the kind of policy adopted and the public’s reaction to it. The number of unknowns in the field of farm animal welfare as they pertain to economic demand, scientific support, and legislators’ willingness to act allows interest groups on either side of the debate to use their resources to influence the creation of legislation and regulations and the scope of policy solutions considered – using the initiative process, traditional lobbying techniques to call for referenda, and testimony and informal feedback during rulemaking proceedings.

DIRECT DEMOCRACY IN THE UNITED STATES

Two basic kinds of direct democracy will be referred to throughout this paper: the initiative and the referendum. An initiative is the process when citizens propose a law, usually through signed petition, and the entire electorate votes on that law. A
referendum, on the other hand, generally starts in the legislature and is voted on by the electorate before becoming law (Magleby 1994, 219; Matsusaka 2005, 158; Lupia and Matsusaka 2004, 465). The initiative and referendum were introduced to the American political landscape during the Progressive Era and populist movement as countermeasures to what many citizens and citizen advocacy groups viewed as economic interest influence and control over legislative bodies, which made them less than truly representative. And some scholars argue that the initiative is “the most important innovation in direct democracy…because it broke the legislature’s monopoly over the agenda” (Matsusaka 2005, 159). The direct democracy institutional procedures were designed to give access and influence to groups, including private citizens, who were normally excluded from legislative discussions by powerful interest groups with legislative agendas (Bowler and Donovan 1998, 4; Braunstein 2004, 2).

In the United States, initiatives come in four basic forms: statutory, constitutional, direct and indirect (Magleby 1994, 219). A statutory initiative can best be described as citizens drafting laws, and is the kind of initiative most relevant to this study. The constitutional initiative has also been used in the push for farm animal welfare policy and occurs when citizens draft constitutional amendments, which happened in Florida. Statutory and constitutional amendments can also be direct, the process by which a proposed law goes directly to the ballot for voters to decide, or indirect, when the legislature is the recipient of the proposed law or constitutional amendment and can consider adopting it.

The referendum is more closely linked to traditional legislation and takes one of three forms: petition or popular, advisory, and legislative. The petition or popular
referendum actually originates with the public and, by petition, is placed on the ballot to attempt to reverse a legislative decision. The advisory referendum is the process by which a law is put before voters to gauge public opinion, but the legislature is not bound by the results of such an election. The legislative referendum is a process, required in some states, whereby a legislature must place a measure before voters. Often these referenda deal with the issuance of bonds or constitutional amendments (Matsusaka 2005, 158; Lupia and Matsusaka 2004, 465). In Ohio, 2009’s Issue 2, which created the Ohio Livestock Care Standards Board, was a legislative referendum dealing with a constitutional amendment, submitted to the electorate for approval.

South Dakota was the first state to adopt the initiative and referendum as political institutions and in 1904, Oregon became the first state to have an initiative appear on the ballot (Boehmke 2005, 17). As of 2001, 49 of the 50 U.S. states allow legislative referenda and more than half (27) allow statewide initiatives or popular referendum (Craig et al. 2001, 26). The frequency with which the initiative and referendum has been used has ebbed and flowed since the late 1800s.

DIRECT DEMOCRACY IN PRACTICE

Since the 1970s, direct democracy in the United States has experienced a resurgence (Craig, Kreppel and Kane 2001, 29-30 and 37) and political scientists have noted that it has important indirect effects. Direct democracy impacts how policy decisions and discussions are dispersed across state lines (policy diffusion) and how state-level concerns are raised to the national policy agenda (Bowler and Donovan 1998, 3; McDonagh 1992, 946). Much of the literature on the effects of direct democracy stress
how the option of using the initiative or referendum changes legislative behavior. As Gerber points out, “the fact that interest groups have the ability to challenge legislative policy ex post means that legislators in states that have initiatives must always be aware of the possibility of future initiative proposals” (1996, 124). In practice, this ever-present threat can play out in a few ways for legislators.

One indirect effect of direct democratic processes is that the threat of an initiative or referendum can pressure legislatures to create policies that “reflect majority opinion” (Mendelsohn and Parkin 2001, 12). Lupia and Matsusaka explain this phenomenon more clearly, highlighting direct democracy’s “median-reverting” quality and emphasizing that the referendum and initiative can be used to push “policy back toward the center of public opinion when legislatures move too far to the right or left” (2004, 474). In particular, they highlight the initiative’s popularity among fiscal and social conservatives because of its influence in driving policy toward more conservative ends than would have otherwise occurred in recent American history (Lupia and Matsusaka 2004, 474). However, James Madison’s essays during the drafting of the U.S. Constitution warn of the power of the majority (Madison 1961). Some scholars of direct democracy warn that “median outcomes may not always be a good thing,” particularly when median outcomes as defined by the majority threaten “the rights of the minority” (Lupia and Matsasuka 2004, 479).

The threat of direct democracy can also make the legislature as a whole and legislators individually more responsive to lobbying efforts (Boehmke 2005, 141). The threat of an initiative might also encourage the legislature to respond to special interests in an attempt to avoid an initiative campaign (Lupia and Matsusaka 2004, 477). To avoid
future initiatives, which can be costly, or to preempt interest groups threatening them, legislators may be more willing to discuss or introduce possible legislation in response to one side or the other of a potential initiative campaign. These indirect effects of direct democracy deserve highlighting as they can be the exact opposite of the intent of citizen access direct democracy processes: Instead of giving those who normally lack access to the political process a way to have their voices heard, some special interest groups with access could use the threat of an initiative to strengthen the influence and access they already possess. The indirect effects direct democracy – legislative responsiveness to special interest groups – may actually strengthen special interest influence in the law-making process in some cases instead of protecting the majority opinion or the public interest by providing public interest groups greater access.

Pitting the two forms of direct democracy against each other, referenda can also be used to preempt initiatives or the initiative process (Gerber 1996, 101) and, symbolically, to gain greater political legitimacy for a decision than another procedural process might provide (Mendelsohn and Parkin 2001, 10). Ohio’s legislative referendum to create the board preempted the initiative the Humane Society indicated it might pursue in Ohio. The verbiage that appeared on Ohio ballots in November 2009 painted a strong symbolic picture for voters, ensuring them that the legislature was serious about protecting Ohio agriculture. The fact that the General Assembly chose to pursue a referendum to amend the state’s constitution instead of simply creating the board, via its statutory authority, perhaps under the Department of Agriculture, may have also been a symbolic maneuver, designed to gain greater legitimacy (through widespread public approval) for an idea developed and lobbied for by large producers and agriculture
commodity groups in the state. Ohio’s use of direct democracy to develop humane livestock standards is no exception; many states have created standards using the initiative and referendum.

CRITIQUES OF DIRECT DEMOCRACY

Direct democracy is not without its critics. Some critics feel legislators are better informed and can make better decisions because of debate and discussion that flow from involvement in committees and forums (Bowler and Donovan 1998, 11). Other critics emphasize the American public’s apparent lack of enthusiasm for political involvement:

The last thing people want is to be more involved in political decision making: They do not want to make political decisions themselves; they do not want to provide much input to those who are assigned to make these decisions; and they would rather not know all the details of the decision-making process. (Hibbing and Theiss-Morse 2002, 1-2)

Still other critics highlight that, by forcing voters to choose between a series of unrelated policy questions, direct democracy does not allow the public to express priorities among issues (Clark 1998). For example, in the case of humane farm animal treatment standards, direct democracy does not permit a voter to prioritize between having humanely raised food and having food that he or she can actually afford to purchase. Instead, voters are simply asked whether or not they prefer animals raised for food or other animal products be treated humanely, without regard to the cost such treatment may add to the consumer’s purchase price.

Perhaps the most scathing critique of direct democratic institutions, however, is that the institutions do not protect against the power of well-organized, well-funded interest groups as intended. Braunstein concludes “organized interest groups have greater
access to the resources necessary to both initiate and win…campaigns than unorganized citizen groups” (2004, 5). Magleby takes Braunstein’s critique one step farther, outlining the implications of limited access to the initiative and referendum processes:

Citizen participation in direct legislation in most states is confined largely to voting on measures put on the ballot with the assistance of the initiative industry and to responding to the campaigns financed by a few individuals or groups willing to make large contributions. (1994, 245)

Certainly, whether or not an initiative or referendum makes it to the ballot is dependent upon gathering enough signatures by determined deadlines, but these authors argue that the success of signature gathering efforts is often dependent on how many resources can be invested in signature gatherers, media and marketers (Broder 2000, 52; Braunstein 2004, 5; Magleby 1994, 245). As one journalist points out after researching the initiative industry in California, “government by initiative is…a big business in which…firms and other players sell their services to affluent interest groups or millionaire do-gooders with private policy and political agendas” (Broder 2000, 5).

In fact, an industry has grown up around the popularity of the initiative. According to Magleby, the initiative industry is the “expansion and professionalization” of initiative campaigns through the use of “professional managers, petition circulators, media consultants, pollsters…” who are involved in getting measures on the ballot, but just as importantly, are running the campaigns for and against initiative measures both in the legislative branch and the legal system (1994, 234-235). The power of the initiative industry becomes more important when its resources – financial, human and temporal – are combined with the influence of American media. Initiative ballot issues can be controversial, which means that coverage of initiative issues sells (Magleby 1994, 236). Initiative industry media professionals know how to capitalize on such controversy to
drive the campaign in one direction or another. For example, in Ohio, much of the media coverage of Issue 2 focused on “outsiders” coming into Ohio to tell Ohioans how to manage its biggest industry – agriculture – or on the perceived “power grab” by the agricultural industry vice the small, family farmer. In reality, the issue is much more complicated, involving aspects of the local food movement, food security and safety, and the impacts of adding stringent regulation to an often struggling segment of the economy.

If the initiative process is not safe from the influences of interest groups with money, people and time, the referendum process may not be immune either. According to Mendelsohn and Parkin,

…in theory, referendums (sic) are designed to permit citizens to make decisions about public policy, but in practice referendums (sic) are used strategically by governments or groups seeking not to turn decision making over to citizens, but to persuade voters to ratify the position favored by the referendum’s sponsor. (2001, 2)

It may be that, in the United States today, the direct democracy process is just as corrupted by power, influence and money as the legislative process was perceived to have been during the Progressive Era. As one journalist noted,

what the founders never could have foreseen…was the growth of a lucrative initiative industry, in which a variety of firms make handsome profits from drafting the language, collecting the signatures, managing the campaigns, and creating the media that result in the passage or defeat of these ballot measures. (Broder 2000, 17)

In Broder’s estimation, the success or failure of an initiative campaign depends as much on the power and resources behind the campaign as the actual issue itself.

Still, the exact nature of the role of money in the initiative process may not be what most think it is. As Daniel Smith points out, “reflecting on the past century, it becomes fairly clear that the initiative process in American states has not been any more
immune from the influence of money than our representative system of government” (2010, 44). He further notes that economic interests routinely spend more on ballot measures than traditional lobbying of state legislatures (Smith 2010, 44). However, whether or not and how spending on campaigns actually affects the outcomes of initiative campaigns remains unclear (Smith 2010, 52). According to Smith’s summary of the research regarding campaign spending on ballot initiatives, many studies conclude “that one-sided spending had little impact when done in support of a measure, but was almost always successful in defeating a ballot measure” (2010, 52-53), while other studies demonstrate that “controlling for media and elite endorsements of measures, …[for] 17 of 32 campaigns for which polling data were available, the initial preferences of voters shifted toward the direction of the side spending more money” (2010, 53). Still other scholars have argued “higher campaign expenditures do not lead to ballot success” (Smith 2010, 53).

Part of what makes determining the impact of campaign spending on ballot measures difficult is the legal framework in which campaign finances must be disclosed. Smith highlights that, not only do “campaign finance disclosure laws…vary across states” (2010, 42), but on multiple occasions federal courts have struck down state laws that attempted “to rein in campaign financing of ballot measures” (2010, 49). Federal courts have apparently argued that public disclosure of campaign contributions is enough to protect “the integrity of the political system” (Smith 2010, 49), despite the fact that “the sizeable sums spent by proponents and opponents prior to a measure’s qualification” are “not a matter of public record” (Smith 2010, 57).
AFTER ELECTION DAY: IMPLEMENTING INITIATIVES AND REFERENDA

The policy process does not end for proponents of direct democracy after Election Day. As Edelman points out “what people get from government is what administrators do about their problems rather than the promises of statutes, constitutions, or oratory” (Edelman 1985, 193), while Berry notes “if an interest group is to maximize its effectiveness, it must be skilled in lobbying the executive branch as well” (Berry 1997, 168). The ultimate impact and meaning of a policy depends upon how it is implemented. Because citizens must yield some power to government actors during the implementation process, winning ballot issues resulting from direct democracy are generally compromises, to some extent, between what the public envisioned and what government actors want (Gerber et al. 2001, 109-110; Lupia and Matsusaka 2004, 467). Because policy must be implemented after legislation is approved, groups who are successful in getting their initiative passed must continue to advocate throughout the implementation process since politicians or bureaucrats may desire minimizing an initiative’s effect through how it is administered or because effects must be minimized to reach a politically acceptable solution (Boehmke 2005, 22).

Rulemaking is part of the process by which legislation is implemented and is accomplished by bureaucratic institutions. As Kerwin and Furlong point out, “rulemaking stands between the enactment of a law by Congress and the realization of the goals that both Congress and the people it represents seek to achieve by that law” (2011, 2). One of the primary reasons the legislative branch yields rulemaking authority to the executive branch is that it does not possess the information or the time necessary to develop sound rules. Thus, bureaucratic agencies are given latitude to seek out the
information they need from industry, “in-house research offices,” public interest groups and “outside experts” (Kerwin and Furlong 2011, 102). As the source of the expertise and information rulemakers need, such special and public interest groups can influence the kind of rules developed, and ultimately, the effectiveness of legislative goals. And these groups understand that influence. According to Kerwin and Furlong’s fourth edition of *Rulemaking: How Government Agencies Write Law and Make Policy*, just over 75 percent of the interest groups they surveyed said involvement in the rulemaking process was as important or more important than lobbying Congress (2011, 193).

The need for continued organization and resources often creates more stress on citizen groups and public interest groups than economic groups or special interest groups. According to Lupia and Matsusaka, organizations that are successful in passing initiatives often disband after elections (2004, 476). Interestingly, a lack of resources following election day and quick disbanding after “winning” may mean that the post-election day implementation phase of direct democracy favors organizations with “staying power” and resources to do so – the very special interest groups direct democracy was intended to help counterbalance through citizen access to the policy agenda and legislative process. For example, after Issue 2 passed in November 2009, the Ohio General Assembly was required to pass implementing legislation to clarify certain aspects of the Ohio Livestock Care Standards Board’s authority, its funding, term limits, replacement appointments, and meeting requirements. After Substitute House Bill 414, the implementing legislation, was signed in late March 2010, the board members were appointed and began holding “listening sessions” for public input and prioritizing among the numerous livestock care issues they were anticipated to address (Ohio Department of Agriculture News Release,
April 30, 2010). According to the meeting minute notes summarizing the June 1, 2010, the Ohio Livestock Care Standards Board meeting, more than 700 people attended the six listening sessions, with 142 people providing oral comments; those who commented included producers, economic interest groups, consumers and humane society representatives (Ohio Livestock Care Standards Board Meeting Minutes June 1, 2010). And as the board meeting minutes from June 15 to November 2, 2010, reveal, approximately 13 of 38 public oral and written comments came from “big agriculture” interest group representatives and 13 more comments came from representatives from “alternative agriculture” or public interest groups involved in the discussions. Only 12, or one-third, of the public comments came from people who did not identify themselves primarily as members or representatives of a specific group (Appendix D). Interest groups, whether public or special, with the resources to continue to engage lawmakers and policy makers during the post-election phase of initiative implementation have continued influence on the results of the “compromise” between the vision of the initiative and the reality of it.

Olson offers a slightly different interpretation of why certain interest groups have more resources, and motivation, to remain active in trying to influence policy implementation after election day has passed. According to him, the public is, as a whole, a large, latent group while business, or special, interests are privileged groups (Olson 1965). He stresses that “large or latent groups will not organize for coordinated action merely because, as a group, they have a reason for doing so” (Olson 1965, 65), and that “smaller groups will frequently be able voluntarily to organize and act in support of their common interests” (Olson 1965, 127). The result of this imbalance between large
and small groups’ abilities to organize and act in a coordinated fashion means “the outcome of the political struggle among the various groups in society will not be symmetrical” (Olson 1965, 127). In other words, the post-election day influence on policy implementation favors smaller groups who are able to become and stay organized, often private or special interest groups, instead of large interest groups, like the general public, who are largely latent and have difficulty becoming and remaining organized to influence policy decisions.

INTEREST GROUPS AND DIRECT DEMOCRACY

While Berry and Fischer seem to imply that public interest group access to the policy process can help balance democracy and bureaucracy, the U.S. institutions most commonly thought to provide access to those groups may be less democratic than originally intended. The access and influence that knowledge, power and money afford individuals and groups seems inescapable in the modern American democracy, even at the state level and perhaps in direct democracy processes. In the United States, Edelman’s observations that “the most cherished forms of popular participation in government are largely symbolic” and “that many of the public programs universally taught and believed to benefit the mass public in fact benefit relatively small groups” could apply to the initiative and referendum processes (1985, 4). During the Progressive Era, industrialists and trade associations organized and pushed for legislation favorable to their industries and the economics of their business sectors (Braunstein 2004, 18; Kolko 1963, 180). Today, special interests, including trade associations and industry groups, citizen groups, and good governance groups organize and push for legislation favorable
to their cause – sometimes using traditional legislative procedures and sometimes using state-level direct democracy processes. Success in some states only drives groups to want more success in other states, through the expansion of benefits and demands or through pushing to get similar measures on other states’ ballots (Edelman 1985, 193; Magleby 1994, 238-239).

In the agricultural policy arena, Luther Tweeten, professor emeritus of agricultural marketing trade and policy in the Department of Agricultural, Environmental, and Developmental Economics at The Ohio State University, advocates the agricultural industry preempting citizen groups by pushing for legislative or policy action in an attempt to self-regulate (1993, 102). In his estimation, a failure to act preemptively could force farmers and agricultural groups to abide by more onerous regulations forced upon them by “alternative interest groups” with “little clout with agricultural committees” who are forced to “use the media to influence public opinion” (Tweeten 1993, 102 and 99). In other words, organized, powerful special interests should act within more traditional legislative processes, where they have more influence than citizen groups, to prevent the possible future use of the initiative to create restrictive legislation or policy. In Ohio, agricultural interests worked with the legislature to preempt the threat of an initiative largely perceived as funded by “outside interests” by placing a legislative referendum to amend the state’s constitution on the November 2009 ballot for voters’ consideration (Advent October 2010; Stimpert October 2010; Minton November 2010). In this way, Ohio legislators were able to preempt the use of one form of direct democracy (the initiative) by using another form of it (the referendum). Preemptive action by industrial economic interest groups and legislatures may sound like a questionable political game,
but some scholars suggests that it has happened before in American history (Kolko 1963; Braunstein 2004). Indeed, industry is often home to the expertise the executive and legislative branches of government need to make sound policy decisions and to accurately characterize potential outcomes, making agency capture a possibility. However, agency capture by special interests is not unavoidable. Using problem setting and collaborative management techniques, intentionally involving a wide variety of opinions and voices in bureaucratic decisions, agency capture can be mitigated.

TECHNOCRATS AND INTEREST GROUPS: SHAPING PUBLIC POLICY

Special interest, bureaucratic and expert influence on the policy process cannot be ignored, especially after election day when policy implementation and rulemaking begin in earnest. One could characterize the influence of individuals with specialized knowledge as a kind of “elite” control of public policy. Fischer posits something similar: that the United States has developed into a “technocratic” state, where a reliance on expert knowledge and scientific decision making in defining policy options limits meaningful democratic participation in governance (1990, 171 and 21) and sustains “increasingly undemocratic forms of decision making” (1990, 14). Fischer relies on Jean Meynuad’s definition of technocracy, which he summarizes as “a system of governance in which technically trained experts rule by virtue of their specialized knowledge and position in dominant political and economic institutions” (1990, 17). Technocrats, as experts in fields such as animal science or agricultural economics that are relevant to the issue of livestock care standards, can greatly sway public policy decisions by limiting policy options, providing evidence or argumentation in favor of one policy option or
another, or because they often become “intermediaries between…decision makers and the groups toward which specific policies are aimed” (Fischer 1990, 171). By limiting the kind and number of options available, the public policy process becomes less democratic and more elite – a smaller cadre of experts are left to make policy decisions about complicated topics because the public is presumed not to have the necessary understanding of the policy issue (which is sometimes, if not often, the case). In the case of Ohio, the Livestock Care Standards Board and its subcommittees can be considered a semi-technocratic group. Many of the people selected to be on the board and the species subcommittees have both academic degrees in animal agriculture, grew up raising animals on farms, and are now animal farmers. Three of the board members are licensed veterinarians, while others are considered knowledgeable in animal welfare and food insecurity issues in the state. Still, most of the board members would not claim to be “experts” in their field. Instead, they might describe themselves as “experienced.” Thus, Ohio’s Livestock Care Standards Board combines both technocrats and bureaucrats, which seems to find a balance between technocratic decision making based strictly on science and decision making taking into consideration public and special interest group opinion by intentionally bringing these groups’ opinions into the discussion.

The danger of technocratic governance, as Fischer points, goes beyond the potential threat to democratic institutions that technocratic decision making poses. In his opinion, in a technocracy, “governance becomes less a matter of determining the appropriate direction for society than one of adjusting its institutions and policies to the flows of economic and technological developments” (Fischer 1990, 15-16). In short, technocracies seem to minimize or ignore the values, or shifts in values, underlying
policy decisions or pressure for policy changes. Dickson agrees, articulating that scientific approaches -- specifically cost-benefit analyses popular in many policy fields -- to “political questions of equality, justice, power, and social welfare” ignore values, ethics and morals (Dickson 1984, 286). The minimization of these values is in many ways unintentional, with the people making policy recommendations assuming public values are in line with technical analysis’ emphasis on positivism (Fischer 1990, 48, 49, 317). Nor is the minimization of these values always possible. While technocratic experts may have a tendency to rely on scientific approaches like cost-benefit analyses, their policy decisions must still be made in context of contemporary concerns. Interest groups, with access to both the experts and bureaucrats involved in decision making, are likely to provide that context.

To alleviate the threat to democracy that technocratic approaches to government embody, both Fischer and Berry argue that the number and kind of groups brought into policy discussions should be intentionally broadened (Fischer 1990; Berry 1977). Berry recognizes the legitimacy of public interest groups and feels the government should “encourage and ease the participation” of such groups (Berry 1977, 291, 292), in order to ensure a broader spectrum of opinions and interests is involved in policy making, whether from the legislature, the executive branch, or bureaucratic rulemaking institutions. He is careful to articulate that economic interest groups should not be afforded the same access as a public interest group as “one that seeks a collective good, the achievement of which will not selectively or materially benefit the membership or activists of the organization” (Berry 1977, 7). Fischer calls his approach to including more voices in the policy process as “problem setting” and proposes that more emphasis in policy circles be placed on
defining the policy problem and identifying the values underlying possible solutions (Fischer 1990, 371). It is exactly the role of social movements, commonly carried into the political arena by public interest groups, to establish new institutions and shape the values underpinning society and public policy (Fischer 1990, 361).

Like encouraging the involvement of public interest groups in rule- and policy making, the involvement of bureaucrats in technocratic decision making may also actually protect democratic institutions. According to Fritschler, “the existence in America of a bureaucracy with policy-making powers assures a more broadly representative decision-making process than one that relies solely on a legislature (1996, 150). In part, the involvement of bureaucrats in policy making means greater representation of a broader range of public opinions because the bureaucracy is, itself, more representative of the public at large than the legislature. The involvement of bureaucrats in policy making also provides people and groups interested in influencing policy “an alternative route to influence” (Fritschler 1996, 143) and “opportunities for and dimensions to public participation that are rarely present in deliberations of Congress or other legislatures” (Kerwin and Furlong 2011, 31).

In the case of the Ohio Livestock Care Standards Board, the roles of technocrat and bureaucrat have been delegated to the members of the board, who were chosen for their expertise as farmers, producers, consumers, animal welfare activists, veterinarians, and department of agriculture employees. Five of the board’s 13 members have advanced degrees in veterinary science or agricultural administration; 2 of the board’s members represent organic farming interests; 4 members, some of whom also hold degrees in animal science or veterinary medicine, represent agricultural industry interests;
2 board members come from public interest groups; and 2 board members have degrees or extensive experience in public administration (Appendix C). A similar inclusion of various interests and expertise has been included in the board’s subcommittees. Because of the diversity of the board and subcommittee members, and because much of the board’s decision making has yet to happen, and rules are likely not to take effect for years, whether the technocrats and bureaucrats involved in developing Ohio’s livestock care standards are creating neutral, public-serving regulations or industry-favoring regulations remains to be seen. However, one can be certain that some board members, seemingly outside the political and bureaucratic elite circles, are not sure how or why they were chosen to be board members (Atherton 2010), and that the board and its subcommittees provides ample opportunity for public input, comment, consent and feedback during its listening sessions and regular public comment periods, and through its electronic comment submissions.◊

GOVERNMENT REGULATION AND REGULATED INDUSTRIES

Since the end of the 19th century, the government has become increasingly involved in regulating private industry. Kunkel describes regulation as the “governmental effort to limit the choices available to individuals within the framework of a democratic society,” either through coercive measures or through a system of incentives (2000, 75). Although school children across America are taught that the Progressive Era and its accompanying regulation of industry grew out government concern over the

◊ There is some indication that the board does consider public comments. Indeed, creating a means through which the public can electronically submit comments and questions to the board was a suggestion made during the May 2010 listening sessions before the board’s work had begun in earnest. The effectiveness of the public comment opportunities will be addressed in Chapter 3.
growing monopolies in key industries and safety concerns for industrial workers, an alternative interpretation of historical events is possible. Kolko suggests government regulation was often initiated by regulated industries to limit the potential destructiveness of an increasingly competitive business environment by forcing order into the economic arena (1963). Other scholars have acknowledged that Progressive Era reforms may have served the needs of businessmen using government for their own purposes (Braunstein 2004, 3) and that regulatory policies generally are not pursued unless the regulated groups find the proposed regulations acceptable (Edelman 1985, 24).

Edelman and Kolko both highlight the relationship between regulator and regulated. During the Progressive Era, and to an extent probably today, political leaders believed industry, as the experts in a given field, should have some say in the regulations to govern their businesses (Kolko 1963, 283). Regulating industry often meant, and still means, the creation of independent commissions charged with enforcing and sometimes developing restrictions and incentives. Edelman points out that it is these bureaucratic commissions’ very independence that makes them “tools of the groups they regulate” (1985, 43). Kolko sheds further light on the subject:

Bureaucracy, in itself, needed a power base in order to operate in a roughly continuous, systematic fashion. Since it had no economic power itself, it had to support, and hence be supported by, powerful economic groups. This was especially true...where the idea of bureaucracy originated with those operating in the very area in which the bureaucracy was to function. (Kolko 1964, 303)

The regulators needed the support of the regulated to enforce any policies, since the regulators were without true power to restrict actions or create incentives.

In the agricultural policy arena, federal regulation of the meat packing industry serves as an example to demonstrate the link between regulator and regulated. Inspection
of meat packing facilities was initiated long before Upton Sinclair’s *The Jungle* in 1906. In the 1880s, large meat packers initiated the reforms with the Department of Agriculture in an effort to improve exports to Europe, an interest of the meat packers, not necessarily the American public. Legislation in 1891 did not satisfy meat packers either: smaller meat packers were excluded from government regulation, giving them a competitive edge in the American market, so larger meat packers lobbied to extend the inspection law. In 1906, the House of Representatives passed the Beveridge Amendment to expand regulation to small meat packers and to further increase American packers’ export status (Kolko 1964). Certainly, the federal government had some interest in regulating the industry to ensure the safety of American consumers, but the driving force behind regulation of the meat packing industry was the packers’ efforts to create favorable, equitable economic conditions across continents and regardless of the size of one’s packing enterprise.

A more recent example of the close relationship between special interests and the government bodies that regulate them is the relationship between the oil industry and the Minerals Management Service. After the Deepwater Horizon Oil Spill in 2010, the Minerals Management Service under the Department of the Interior was reorganized to “address claims that the current organization…fosters weaknesses in the MMS regulatory actions” (Congressional Research Service June 18, 2010, 32). The concern was that the Minerals Management Service managed both the operational and revenue aspects of the outer continental shelf leasing program, which created a conflict of interest for the Minerals Management Service that business interests could exploit to their advantage (Congressional Research Service June 18, 2010, 32).
Government regulation of industry is a way for the government to secure benefits for a group of people. American citizens are encouraged to believe that the regulations provide benefits to the public in general, and in many cases, they do. But what if the benefits actually affect a smaller subset of the public while only serving to placate the general public?

Administrative agencies are to be understood as economic and political instruments of the parties they regulate and benefit, not of a reified ‘society,’ ‘general will,’ or ‘public interest.’ At the same time, they perform this instrumental function, they create and sustain an impression that induces acquiescence of the public in the face of the private tactics that might otherwise be expected to produce resentment, protest, and resistance. (Edelman 1985, 56)

Government regulations can, and do, protect the public at large, but in some instances, regulations also protect certain segments of society or business from competition. In these instances, regulation can serve a symbolic purpose: placating the general public by making them feel good about the regulation while masking that the regulation actually benefits a small segment of society. The same can be said of direct democracy. In some cases, direct democracy may enable the public to inform policy debates and secure policy decisions favorable to its general will; in other cases, it may be that direct democracy provides interest groups a process through which they can achieve their own goals while making the public feel good about it.
II. SETTING THE SCENE FOR HUMANE LIVESTOCK STANDARDS IN OHIO

Some authors define animal welfare as general health of the animal and “what the animal wants” (Dawkins 2006, 78). Webster provides a bit more clarity about what animal welfare means: an animal’s “ability to sustain fitness and avoid suffering” (2001, 229). Webster’s definition implies that good farm animal welfare policy will protect both an animal’s physical and mental well-being:

the phrase “sustain fitness” implies physical welfare; e.g. freedom from disease, injury and incapacity, and this acquires particular importance when these problems can be directly attributed to the conditions in which the animals are reared. The expression “avoid suffering” refers to mental welfare. (Webster 2001, 232)

Federal regulation in the United States addresses farm animals’ physical and mental well-being during rearing only tangentially. Certainly, federal regulation addresses the food safety issues of allowing downer livestock into food supplies, but for the most part, federal regulation of animal welfare has avoided directing how farmers must treat livestock while they are being reared. Instead, federal regulation of animal welfare pertains to shipping standards, slaughter standards, and animal research standards (Tweeten 1993, 95). The inability or unwillingness of the federal government to address humane livestock standards on the farm is likely influenced by the power the traditional
agricultural establishment (Table 1) has over legislators on agricultural committees (Tweeten 1993, 87). Key members of the Senate Committee on Agriculture, Nutrition

| Table 1. Agricultural Establishment |
|-----------------------------------|---------------------------------|
| Producers                         | General farm organizations      |
|                                   | Commodity organizations         |
|                                   | Individual farmers              |
| Agribusiness (private & cooperative) | Output processing and marketing firms |
|                                   | Input supply firms              |
|                                   | Agricultural media              |
| Government & Government Agencies  | Farm-state governments         |
|                                   | Agricultural committees in Congress |
|                                   | U.S. Department of Agriculture  |
|                                   | Land-grant agricultural colleges |

Source: Tweeten 1993, 89

and Forestry received roughly 10 percent of their campaign contributions from agricultural or agriculture-related industries between 2005 and 2010. In the two-year period of 2009 to 2010, the chairman and the ranking minority member of the House Agriculture Committee received more than 35 percent of their campaign contributions from the same industries (Appendix B).

Undoubtedly, creating and enforcing humane livestock standards at the federal level would be unpopular with the agricultural establishment, whose membership generally includes the types of organizations and businesses that would be impacted by the financial burden that such standards would create on an industry already widely believed to be suffering economically. Government regulations changing how bulk quantities of animal products are produced will impact the cost of raising livestock for the

---

9 The Prevention of Farm Animal Cruelty Act, House Resolution 4733, was introduced in the U.S. House of Representatives in March 2010. It requires “Federal agencies to procure food products derived from certain animals only from sources that raised the animals free from cruelty and abuse, and for other purposes” (U.S. Congress March 2, 2010). It was referred to the House Subcommittee on Livestock, Dairy and Poultry in June 2010.
farmer. The regulations may require farmers to make “substantial changes” to their farming operation that require capital most farmers do not have and that may impact a farmer’s ability to sell his goods or force him to employ a more skilled labor force (Webster 2001, 145). Such was the case in California, according a story published by the state’s farm bureau, where one egg producer spent $3.2 million dollars to construct one laying facility that meets all of the state’s 2008 Proposition 2 concerns (Adler July 7, 2010). The cost of mandated changes can threaten to put farmers out of business and, ultimately, affect the price consumers pay for livestock-related products.

Still, some agricultural interests consider instituting different, more humane livestock rearing standards worth the cost. Tweeten calls this disparate group of people and organizations, a segment of whom advocate animal welfare, animal rights and the importance of small family farms in lieu of factory farming “alternative agriculture” (Tweeten 1993, 93).

Part of what makes it difficult for policy makers to create different standards for farm animal care is that the science behind the pros and cons of specific rearing practices is often disputed. Croney points out three substantial problems with the scientific research concerning what improves animal health and what animals want: the research has been vilified by opponents of farm animal welfare standards, the animal health field of study is a relatively new discipline with insufficient result replication; and the research somewhat lacks “transparency in methodology and interpretation of results” (2007, 557). The unsettled nature behind the science of animal welfare creates a difficult field for

The assumptions and calculations behind this cost estimate are unknown and may be exaggerated to strengthen the position of the state’s farm bureau, which opposes the changes being mandated. Still, one can reasonably expect that producers will incur some cost to convert existing facilities to comply with new standards or to build new production facilities. Some producers will be unable to assume those costs.
policy makers wishing to make evidence-based decisions. Especially in the United States, there is a general desire to make policy decisions based on science (Kunkel 2000, 201; Croney 2007, 561; Lusk and Norwood 2008, 1121), but the science does not always exist and, if it does, is not always adequately replicated or seems to support one method of rearing livestock just as much as it supports another.

In those states that recognize the inherent complexity of defining humane livestock standards without ignoring public sentiment, making food too expensive for consumers to afford, or decimating the livestock industry, legislators have created boards or someone has stepped in to encourage, and facilitate, discussions between livestock producers and humane farming advocates. Other states have chosen to tackle the problem head on, enacting laws that require farmers and producers to raise animals a certain way, while other states have chosen to avoid the issue, sometimes enacting legislation that prevents other jurisdictions from addressing the problem.

BLAZING THE TRAIL FOR FARM ANIMAL WELFARE: FLORIDA, ARIZONA AND OREGON

Ohio is far from the first state to become involved in detailed, deliberate discussions about whether or not humane livestock treatment standards should be adopted, and if so, what they should be. In 2002, Florida became the first state to adopt farm animal welfare policy. The citizens did so after adopting the “Animal Cruelty Amendment” to the state constitution. The amendment outlawed the “cruel and inhumane confinement of pigs during pregnancy” in any way that prevented a sow from “turning around freely,” except “during the prebirthing process” and when the sow is receiving
veterinary treatment (Florida Department of State Division of Elections). At the time of
the initiative, the law was expected to impact between 700 and 3,000 sows and only one
or two farms in a state that ranks below 30th in pork production (Kuehn October 1, 2002;
Hinman April 15, 2010).

In 2006, Arizona adopted Proposition 204, the Humane Farming Initiative, which
became the Humane Treatment of Farm Animals Act. The act outlawed the confinement
or tethering of a

pig during pregnancy or any calf raised for veal, on a farm, for all or the
majority of any day, in a manner that prevents such an animal from: 1.
lying down and fully extending his or her limbs; or 2. turning around
freely. (Arizona Revised Statute Section 13-2910.07 – 13-2910.08)

At the time of the initiative, the generally conservative state was home to only one
industrial pork operation (Roosevelt November 6, 2010) and no veal production (Hinman
April 15, 2010; The Arizona Republic October 19, 2010).

A year later, Oregon became the first state whose legislature adopted some form
of farm animal welfare policy. The state’s 2007 Senate Bill 694 banned the confinement
of “a calf or a pig for more than 12 hours during any 24-hour period in a manner that”
restricts the animal’s ability to lie down and fully extend its limbs or turn around freely
(Oregon Legislative Assembly 2007). Much like the initiative in Arizona, the legislation
was specifically aimed at the use of gestation crates (Humane Society of the United
States June 28, 2007), stalls approximately 2 feet by 7 feet used to confine pregnant
breeding sows and generally acknowledged to prevent sows from moving freely, and the
tethering of veal calves. According to the Oregon Farm Bureau – an organization that
opposed the legislation – Oregon was not a large pork producing state, being home to
small family-owned farms that did not use gestation crates (Fiala September 1, 2007),

31
and produced no veal. However, the state’s farm bureau warned that the legislation would impact Oregon’s dairy industry “by outlawing basic tethering practices that are used for the well-being of dairy cows” (Fast Spring/Summer 2007).

Florida, Arizona and Oregon blazed three different trails to follow as the political movement to demand humane livestock standards began to expand. Acting within each state’s legal framework, the three states chose three different political approaches to instituting standards. Florida recognized the position of the Humane Society and other animal welfare groups by drafting a constitutional amendment for public approval (Florida Department of State Division of Elections); Arizona voters recognized the importance of humane livestock rearing and production through a voter initiative (Farm Sanctuary). Oregon’s legislature acted within its statutory authority to create minimum livestock treatment standards (Oregon Legislative Assembly 2007). The agricultural industries affected in each of these three states were not broad, influential groups (Kuehn October 1, 2002; Hinman April 15, 2010; Roosevelt November 6, 2010; Fiala September 1, 2007). The measures that created humane livestock standards were probably opposed by a few groups, but the measures passed with little or no evidence of detrimental impact because the number of producers they affected, if any, was relatively small in each state.

A MOVEMENT GAINING MOMENTUM: CALIFORNIA

Emboldened by success in Florida and Arizona and unpressured progress in Oregon, the Humane Society of the United States, a driving force between the initiatives in Florida and Arizona, and its partners spearheaded the effort to place an initiative on the

© The actual impact of Oregon’s legislation on the state’s dairy industry remains undetermined because the ban on tethering and confinement does not take affect until January 1, 2012.
ballot for Californian voters in 2008. Proposition 2, adopted as the Prevention of Farm Animal Cruelty Act with 63 percent of the vote (American Veterinary Medical Association February 2009), outlaws the confinement or tethering of animals “on a farm, for all or the majority of any day, in a manner that prevents such animals from: (a) lying down, standing up, and fully extending his or her limbs; and (b) turning around freely” (California Health & Safety Code Section 25990-25994). For the first time, because the ballot initiative covered “farm animals” generally, the use of battery cages, common housing for egg-laying hens on industrial egg production farms, was prohibited (Lovvorn and Perry 2009) – in a state that ranks as the fifth-largest egg producer in the United States (Hinman April 15, 2010).

In June 2008, before the passage of Proposition 204, the University of California Agricultural Issues Center at the University of California-Davis released a study detailing the “Economic Effects of Proposed Restriction on Egg-laying Hen Housing in California.” The study concluded “the impact of the initiative would not affect how eggs would be produced, only where eggs would be produced” (Sumner et al. July 2008). The authors stated California, a net importer of shelled eggs, would incur production costs in non-organic, non-cage systems that were 20 percent higher than in battery cage systems. Thus, regulation created by Proposition 204 would actually favor out-of-state egg production and almost eliminate egg production in the state during the six-year adjustment period granted to producers in the ballot initiative (Sumner et al. July 2008). The forecasts of the center’s study may never be confirmed. In response to the center’s predictions, to prevent other states from convincing Californian egg producers to move to other states (Greene July 8, 2010), or perhaps in an effort to expand humane protections
for farm animals, California passed Assembly Bill 1437 in 2010, which requires egg producers who want to sell shelled eggs in California to meet the state’s standards for humane treatment (California Legislature February 27, 2009).

Like California, Ohio is an important egg-producing state, ranking second in the nation (Ohio Secretary of State, Profile Ohio). Similar predictions have been made about how increased housing space for laying hens or cage-free requirements would decimate the Ohio egg industry. A paper, modeled on Sumner et al.’s study in California and presented to the Ohio Livestock Care Standards Board in the summer of 2010, by an undergraduate student in economics at The Ohio State University predicted the end of egg production in Ohio if egg producers in Ohio were required to convert to cage-free housing for laying hens. The report predicts production costs would increase 39 percent for Ohio egg producers; the greater number of cage free eggs would flood the market and drop the price of such eggs; and out-of-state caged-egg producers would increase shipments into Ohio, thus all but forcing Ohio egg producers to exit the market (Black 2010, 11). As in California, the standards the Ohio Livestock Care Standards Board develops may require protective action by the General Assembly. Some might argue that the board provides a more comprehensive approach to the development of livestock care standards, but no matter where the standards come from – initiative or board – further legislative action may be required to protect Ohio producers from out-of-state competition with lower treatment standards and production costs. When and if standards defining more restrictive rearing standards are created in Ohio for laying hens and other livestock, similar protective legislation may become necessary. Both the Ohio Livestock Care Standards Board and the Ohio General Assembly must remain prepared to manage
the secondary effects of implementing humane livestock standards. Indeed, the regulation of the agricultural industry in any state may require a collaborative relationship between the bureaucratic agency designing and implementing new rules and the governing body able to make additional laws necessary to protect the viability of the livestock industry in any given state.

The importance of the egg industry to the Californian agricultural economy; the growing interest in humane farm animal treatment due to books, movies and exposés about industrial agricultural; renewed academic interest in the topic; and the fact that California’s appeared on the ballot during the same year as a presidential election helped propel the issue of farm animal welfare legislation and the discussion of humane treatment of farm animals forward in many states.

COMPROMISE IN COLORADO AND MICHIGAN

During 2008 and in the years following California’s initiative, many states, including Ohio, decided to act preemptively to prevent a costly initiative battle. Colorado was the first state to create a board to facilitate discussions between humane farming advocates, like the Humane Society, and agricultural producers and the groups that represent their interests, and to develop humane livestock standards. Colorado, threatened by a costly initiative (Ballotpedia) designed to prohibit the confinement of farm animals, decided to negotiate with farm animal welfare policy proponents. After a meeting between the Humane Society of the United States and multiple state agricultural groups – a meeting mediated by the governor, the agriculture commissioner, and famed bioethicist and Colorado State University philosophy professor Dr. Bernard Rollin -- the
Senate Agriculture Committee and House Agriculture Committee chairmen introduced legislation, which passed by a wide margin in both houses of the legislature in 2008. The legislation phases out veal crates and sow gestation crates over different lengths of time (Humane Society of the United States May 14, 2008). It also created an “advisory board” under the state Commissioner of Agriculture “to review animal husbandry practices” (Colorado Farm Bureau News May 20, 2008). In return, the Humane Society withdrew its initiative. The Farm Bureau hopes the board will ensure “animal welfare and husbandry questions are submitted to a process based on science and not emotion” (Colorado Farm Bureau News May 20, 2008).

Compromise was again key to avoiding a costly initiative battle while responding to consumer concerns in 2009 in Michigan. Perhaps taking her cue from Colorado and hoping to avoid the contention she was seeing in neighboring Ohio after legislators in her own state introduced legislation to preempt a threatened ballot initiative, the governor and speaker pro-tempore gathered legislators, agricultural industry representatives and the Humane Society to work on compromise legislation (Johnson October 9, 2009; Michigan Agri-Business Association). House Bill 5127 restricted the confinement of animals in much the same way the Humane Society has advocated in multiple states and primarily is concerned with veal calves, egg-laying hens, and gestating sows (Michigan Compiled Law Section 287.246). House Bill 5128, which would create a nine-member Animal Care Advisory Council under the state’s Department of Agriculture, was introduced shortly after the passage of House Bill 5127. That bill is currently in committee (Michigan Legislature).
In both Colorado and Michigan, two keys to successful discussions and concessions from both sides of the issue seem present. The first is the involvement of a neutral party, one who stands to gain in no way from standards that benefit producers or animal welfare activists, in a “facilitator” or “mediator” role. In Colorado, Dr. Rollin, who balances ethical and philosophical arguments about animal agriculture at Colorado’s land grant university, primarily filled that role. In part, the governor also played the role of facilitator, although a student of political science might argue that he would gain politically by avoiding a costly, and divisive, initiative battle in his state. In Michigan, the governor appears to have played the role of mediator, bringing both animal welfare activists and agricultural producers to the table to avoid the division brewing in Ohio in 2009. The second key to success seems to be interest groups, both special and public, relying on the statutory authority resident in the legislature to adopt standards agreed upon by each side of the debate. By allowing the legislature to create laws regarding standards, special and public interest groups avoiding costly ballot initiatives, demonstrated trust in the people’s elected representatives to adopt reasonable standards, and created bodies, adaptable through legislative processes instead of additional constitutional amendments, through which future dialogue on livestock issues could continue.

BOARD CREATION ABOUNDS

The successful use of negotiations to avoid ballot initiatives and the potential of an advisory board to help guide farm animal welfare policy decisions seemed attractive to other states. With and without the threat of an initiative, Oklahoma, West Virginia,
Missouri, Kentucky, Illinois, Idaho, and Vermont have taken legislative action to create livestock care standards boards* (Oklahoma House of Representatives February 18, 2010; West Virginia Legislature February 26, 2010; Animal Law Coalition May 15, 2010; Animal Law Coalition February 17, 2010; American Veterinary Medical Association July 2010). Instead of creating a new advisory board, Indiana and Louisiana legislated new responsibilities for their existing Boards of Animal Health (Indiana General Assembly 2010; American Veterinary Medical Association July 2010). Alabama reinforced the state Department of Agriculture’s authority to make animal husbandry decisions (American Veterinary Medical Association July 2010); and Utah expanded the duties of the existing Agricultural Advisory Board to include recommendations on animal husbandry practices (American Veterinary Medical Association July 2010). In 2009 and 2010, only two states – Massachusetts and Maine – passed legislation directly outlawing certain types of confinement of farm animals (Animal Law Coalition April 12, 2009; Animal Law Coalition May 15, 2009). Rhode Island tabled legislation banning certain types of confinement (Animal Law Coalition April 5, 2010), while Georgia and South Carolina passed “intent to occupy” legislation at the state level preventing lower jurisdictions from creating farm animal husbandry policies (State of Georgia Senate Research Office 2009; Animal Law Coalition April 12, 2009).

In almost all cases where a board was created to discuss or develop standards, it was done so through a legislature’s statutory authority instead of by constitutional

* While multiple states took legislative action, that action may or may not have been completed during the legislative session. Some of the proposed bills remain in committee, or are out of committee but have not been approved by the legislature as a whole.
amendment, as was the case in Ohio. Most of the boards have representation, like Ohio’s, from producers, commodity groups, veterinarians, animal scientists, and consumers, although not all of the boards include humane society representatives. The Colorado Farm Bureau makes no mention of a humane society representative on the advisory board created by Senate Bill 201 (Colorado Farm Bureau News May 20, 2008), and Kentucky’s board reserves no seat for a humane society representative (Kentucky Revised Statutes Chapter 257.192). However, West Virginia’s Livestock Care Standards Board, modeled closely after Ohio’s, does (West Virginia Code Chapter 19 Section 19-1C-1). In many cases, producers and legislators view the boards as long-term, comprehensive approaches to the issue of humane livestock standards and the best method for balancing agricultural interests with public concerns, often advocated by powerful special interest groups, about food sources and consumer confidence in food safety. In the states that have chosen not to include humane farming advocates in their board membership, the balance is clearly tipped in favor of producers and agricultural interests, but that is not to say that public concerns and consumer confidence are being ignored. Their concerns may just be being considered through the eyes of a producer. As the executive vice president of the Ohio Pork Producers Council indicated, the way producers think about customers is changing as a result of the initiatives and board discussions in several states. No longer are processors considered their primary customer; the base has broadened and producers are beginning to consider what the public thinks of various farming practices (Isler December 2010). Still, many of the achievements of these boards remain to be seen. In the end, they may result in valuable advancements in the treatment of livestock on farms across the United States, or they
may simply shore up the dominance traditional commodity producer groups have over
determining “best management practices” for various kinds of livestock. But one thing is
for certain, including humane farming advocates on the boards creates a much greater
impression of willingness to hold meaningful dialogue and possible compromise than
appearing to ignore the interests who brought the issue of humane livestock treatment to
light to begin with. In this way, the boards have important symbolic value, but the future
may prove they also actually work.
III. OHIO’S APPROACH TO HUMANE FARM ANIMAL POLICY

After experiencing success in 2008 in California, the Humane Society of the United States targeted Ohio – which ranks in the top 10 states in both egg and hog production – for an initiative campaign for humane farm animal treatment standards (Hinman 2010). On February 17, 2009, Humane Society representatives met with the Ohio Farm Bureau Federation, Ohio Cattleman’s Association, Ohio Pork Producers Council, and representatives from the other state-level animal agriculture and veterinary medical associations to discuss opportunities to negotiate humane farm animal legislation in the state (Zippay March 5, 2009). After the meeting, instead of working toward a possible compromise with Humane Society officials, state agriculture business leaders, including the Ohio Farm Bureau Federation, worked with Ohio politicians, including the governor’s office and multiple legislators, to draft a joint resolution to preempt a possible Humane Society initiative campaign (Langel et al. November 15, 2009; Johnson September 6, 2009; Stimpert October 2010; Lynch November 2010).

In mid-June 2009, Senators Bob Gibbs and Jason Wilson and Representatives Allan Sayre and Margaret Ruhl introduced identical legislation, House Joint Resolution 2 and Senate Joint Resolution 6, in each of their respective chambers of the Ohio General Assembly (Lynch November 2010). Each version of the resolution moved quickly through the legislative process, with amended Senate Joint Resolution 6 being approved by both chambers of the General Assembly on July 13 (Ohio General Assembly 2009). The Democratically-controlled House approved the resolution 83 to 16, and the
Republican Senate accepted the House’s amendments later that day with a 31 to 1 vote (Gongwer News Service Ohio July 13, 2009). The legislative referendum Issue 2, which asked voters to amend the Ohio Constitution by creating a Livestock Care Standards Board, was cleared to be included on the November ballot. According to then-Ohio Governor Ted Strickland’s advisor for agricultural policy, the legislature, the special interest groups, and the governor supported a constitutional amendment because of the importance of needing “buy-in” from the voters. All parties in support of Issue 2 were certain the Humane Society would come to Ohio with an official ballot initiative “sooner or later” and when that happened, voters needed to question why they were being asked to vote on livestock care standards again (Lynch November 2010).

During the campaign for and against Issue 2, more than $4 million in contributions were reported in support of Issue 2, with roughly 75 percent of that amount coming from Ohio farmers and farming and commodity organizations and 25 percent coming from out-of-state commodity and producer organizations. Meanwhile, “no contributions or expenditures [were] reported by Issue 2 opponents, including the Humane Society of the United States” (Nash October 23, 2010). In November, 64 percent of Ohio voters approved Issue 2 (White November 4, 2009), passing in 87 of Ohio’s 88 counties (Ohio Secretary of State, State Issue 2 Official Results November 3, 2009).

THE OHIO LIVESTOCK CARE STANDARDS BOARD

By law, the Ohio Livestock Care Standards Board is charged with “establishing standards governing the care and well-being of livestock and poultry” while considering
factors that include, but are not limited to, agricultural best management practices for such care and well-being, biosecurity, disease prevention, animal morbidity and mortality data, food safety practices, and the protection of local, affordable food supplies for consumers. (Ohio Constitution, article XIV, Section 1(A))

The 13-member board is chaired by the director of the state Department of Agriculture, has 10 members who are appointed by the governor (Table 2); one member (a family farmer\(^*\)) appointed by the Speaker of the House of Representatives; and one member (also a family farmer) appointed by the President of the Senate (Ohio Constitution, article XIV, Section 1(A)). When the board began meeting in late spring of 2010, the overall membership included three veterinarians,\(^3\) the owner-operator of a certified organic farm, representation from multiple county- and state-level farming organizations, and a consumer representative with experience advising lawmakers about food insecurity policy in the state (Appendix C). Unlike some other states, the traditional agricultural establishment does not dominate board membership, nor is the board filled with people who had previously been regularly involved in Ohio political discussions. The governor’s office appears to have worked to create a board that truly incorporates the opinions and concerns of multiple special and public interests throughout the state.

\(^*\) The definition of “family farmer” is not delineated in the resolution, the subsequent constitutional amendment, or implementing legislation. The lack of definition is a major discussion point for some who think the board will be stacked in favor of “big agriculture” interests; however, as a member of the Ohio Livestock Care Standards Board representing “family farmers,” Stacey Atherton emphasizes that “farms are changing” and very few farming families “do it all” now, which enables them to “have a life.” She is one of four owners of her farm, sharing ownership with male family members, but they also employ 15 to 18 non-family members. Further, what many consider “corporate farms” are often family-oriented. (Atherton October 2010)

\(^3\) The Ohio Veterinary Medical Association (OVMA) had previously testified before the Ohio House Agriculture and Natural Resources Committee and Ohio Senate Agriculture Committee that OVMA “would like to see more than two veterinarians represented on the 13-member board” as prescribed by the implementing legislation. (DVM Newsmagazine, June 28, 2009)
<table>
<thead>
<tr>
<th>Number of members</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Agricultural establishment (producers, agribusiness, government agencies)</td>
</tr>
<tr>
<td>2</td>
<td>Alternative agriculture (small farm and organic farming advocates)</td>
</tr>
<tr>
<td>1</td>
<td>Animal welfare activist</td>
</tr>
<tr>
<td>4</td>
<td>Neutral scientists and academics</td>
</tr>
<tr>
<td>2</td>
<td>Consumer advocates</td>
</tr>
</tbody>
</table>

Source: http://www.ohiolivestockcarestandardsboard.org/content/board/about_board.aspx

GIVING THE BOARD TIME TO WORK

For the first half of 2010, it did not appear as though the creation of a Livestock Care Standards Board would prevent the Humane Society of the United States from returning to Ohio with an initiative to legislate, by direct democracy, standards the board would then have to implement. Ostensibly an initiative by Ohioans for Humane Farms, the proposal was backed by the Humane Society, as well as Farm Sanctuary, United Farm Workers, the Ohio Society for the Prevention of Cruelty to Animals, the Center for Food Safety, the Consumer Federation of America, and the Center for Science in the Public Interest – organizations that had, generally, previously opposed Ohio’s 2009 Issue 2 (Agriculture in Ohio October 15, 2009). But on June 30, 2010 – the day signatures collected in support of a ballot initiative are due to the Ohio Secretary of State – the Humane Society chose not to file. The choice followed two days of intense discussions, requested and facilitated by the governor’s staff, at the governor’s mansion between the Humane Society, Ohio Poultry Association, Ohio Pork Producers Council, Ohio Cattleman’s Association, Ohio Corn Growers Association, Ohio Soybean Association, and the Ohio Farm Bureau Federation (Lynch November 2010; Minton November 2010).
The two-day discussion resulted in the creation of a “contract” signed by all parties to the discussion called The Agreement (Appendix E). In The Agreement, the signing organizations agreed to recommend the enactment of reforms related to “cockfighting, puppy mills, keeping dangerous exotic animals as pets, and the five elements of the ballot measure relating to livestock agriculture” (Pacelle July 1, 2010). Specifically, the groups agreed to recommend to the Ohio Livestock Care Standards Board a phase-out of veal and sow gestation crates, a ban on strangling animals on farms or transporting downer cattle, and a moratorium on the building of new battery cage facilities for laying hens in Ohio (Pacelle July 1, 2010; Minton November 2010). In exchange for these concessions from agricultural production groups, the Humane Society agreed not to submit its 2010 initiative to the Ohio Secretary of State or to litigate to force the board to adopt the livestock standards they intended to propose in their unfiled 2010 ballot initiative (Minton November 2010). As a result of the last-ditch discussions, the Humane Society received support for the improvement of livestock care standards in Ohio from the agricultural groups, while agricultural groups were granted time for the Ohio Livestock Care Standards Board to clearly define what new standards should be and the timeline for those standards take effect. (Historically, agricultural groups seem to have perceived the timelines in Humane Society initiatives as too aggressive.)

What is not clear in any of the newspaper articles or other publicly available information is why all the parties agreed to come back to the table to negotiate. The

---

* The “contract” is not a legal contract and, hence, is non-binding; however, the threat of the initiative which underlies The Agreement remains an important consideration behind the board’s work.
* Federal regulations regarding downer animals apply only to animals at processing plants. The board’s effort to address how downer animals should be treated on the farm is meant to address this apparent loophole in the federal law (Atherton October 11, 2010).
agricultural establishment groups had appeared to have the upper hand throughout most of 2009 and 2010. They had prevented a Humane Society-funded ballot initiative in 2009, successfully lobbied for the creation of a livestock care standards board, and had been satisfied with the number and type of representation they had through the board and its subcommittees during the board’s initial efforts to create livestock standards. On the other hand, the Humane Society had easily gathered more than enough signatures to support its 2010 ballot initiative in Ohio that, if passed, would dictate certain standards and require the board to adopt them. Suddenly, both sides of the debate agreed to sit down to negotiate. To the governor’s policy advisor, it was not such a surprise.

According to her, the Humane Society prefers to negotiate instead of wage expensive ballot initiative campaigns (Lynch November 2010). Additionally, informal polling by both the Humane Society and the Ohio Farm Bureau Federation indicated the animal welfare group had the needed support to win a ballot initiative, which would force producers to change production standards and accept an aggressive timeline to implement changes (Lynch November 2010). Undoubtedly, the governor’s advisor was also motivated to call the meeting because of the office’s previous role in working with the Farm Bureau to draft the legislation that led to Issue 2 and publicly supporting the Ohio Livestock Care Standards Board’s creation and mission. The governor’s policy advisor clearly had an interest in seeing the board succeed.

But what had gotten all the parties to the point where such last-minute discussions even provided hope of a compromise? Some time before June 2010, an attorney representing a large egg farm in Ohio contacted the Humane Society’s Wayne Pacelle and asked what a compromise would look like if producers and the Humane Society
could reach one (Lynch November 2010). After a reply from the Humane Society and some discussion with the egg producer, the attorney called the governor’s office and requested a meeting. The meeting between Wayne Pacelle, the egg farm attorney, the governor’s Executive Assistant for Agricultural Policy, and the governor’s Chief of Staff, during which they examined what a potential compromise might look like, resulted in the governor’s agricultural policy assistant taking draft compromise language to the Ohio Farm Bureau Federation (Lynch November 2010). The draft verbiage bounced between the Humane Society, the Farm Bureau and the individual commodity groups until June 28. After weeks of working to reach a compromise, with the deadline to file a ballot initiative two days away, and knowing the Humane Society had enough signatures to get a measure on the ballot, the governor’s agricultural policy advisor called Wayne Pacelle and convinced him to come to Ohio to sit down with the commodity groups to try to reach a final compromise (Lynch November 2010). The compromise, The Agreement, gives the board time to do what it was intended to do, time to see if the board can provide a voice to a variety of interests, both public and private, in the state’s efforts to develop more humane livestock standards.

ENTREPRENEURS AND FIXERS

Perhaps the most important reason the board appears to be a viable policy-making body is that it has the time to engage in discussions about the various livestock standards it was chartered to address in its implementing legislation. Bardach makes a wise observation about the development and implementation of public policy:

Policy formation and implementation proceeds by trial and error, after all, not only because it is inevitable, up to a point, but also because it is
desirable. Like most successful social learning, good policy development is learning by doing. (Bardach 1979, 275)

If this is the case, giving an approach to policy time to work is essential. Regarding the Ohio Livestock Care Standards Board, no one on the board or closely linked to the board’s decisions thinks the approach Ohio has chosen to take in regards to examining and developing humane livestock standards is simple (Atherton October 2010; Minton November 2010). The implementing legislation creating the Ohio Livestock Care Standards Board requires it to examine not only the well-being of veal calves, pregnant sows and laying hens as a Humane Society initiative would have done, but directs the board to consider a wide variety of livestock, including pork, cattle, goats, sheep, poultry, alpacas and llamas (Ohio Legislative Service Commission, Final Analysis, Sub. H.B. 414). The board members and subcommittee members are not experts on rearing standards for each of these different types of livestock. Time is necessary for them to examine current practices in Ohio, best practices suggested by commodity and livestock organizations, and scientific research related to the impact on the animals of current best management practices and alternative practices. Without The Agreement that ended the Humane Society’s 2010 initiative campaign, the board would not have had time to consider, in adequate detail, each of these subjects for each of these species, and may have been forced by the political climate and situation in Ohio to adopt short-sighted or even standards more harmful to animals than current practices.

What allowed The Agreement to come to pass, and ultimately created a climate in which the board has time to consider its responsibilities and make well-considered recommendations, are two key people. The first was a policy entrepreneur. As Roberts and King describe policy entrepreneurs, they are “outside the formal positions of...
government,” but work to “introduce, translate and help implement new ideas into public practice” (Roberts and King). Although the idea of compromising with the Humane Society on how to develop humane livestock standards had been pursued in other states, Ohio’s agricultural establishment had almost summarily dismissed it after February 2009. It took a policy entrepreneur, willing to introduce a new idea into Ohio’s public administrative and political landscape, to actually move dialogue about standards forward in a more inclusive manner. In Ohio, that entrepreneur was the lawyer who represented a major egg producer and who reached out to the Humane Society about what a compromise might look like and then the governor’s office once a compromise seemed reasonable.

Equally important to creating the kind of environment where the board would actually have time to work, was the governor’s Executive Assistant for Agricultural Policy. In Ohio, that policy advisor, Jennifer Lynch, acted as a sort of policy fixer. At her invitation, Wayne Pacelle of the Humane Society returned to Ohio for discussions in the days leading up to the deadline to file a ballot initiative, and state agricultural leaders at odds with animal welfare interests were able to sit down and discuss with him what a final compromise might look like and how each of the parties to the compromise might be held accountable. By making these discussions happen, she essentially changed the system in which livestock care standards decisions would be made in Ohio. Bardach may as well have been describing how to develop and implement humane livestock standards at the state level when he said

A single governmental strategy may involve the complex and interrelated activities of several levels of governmental bureaus and agencies, private organizations, professional associations, interest groups, and clientele populations. How can this profusion of activities be controlled and
directed? This questions is at the heart of what has come to be known…as the ‘implementation problem.’ (Bardach 1979, 5)

In Ohio, as in other states, developing recommendations for livestock care requires the state to balance the concerns and interests of multiple state agencies, county humane societies, commodity groups, state-wide agricultural groups, and consumers. Yet, the board’s work was being constrained by the pressure of a potential ballot initiative that would have forced them to adopt certain standards. When the opportunity presented itself, Lynch seized upon the chance to shield the board and its decision making from the “constantly shifting set of political and social pressures” it faced while trying to develop standards of care and methods of implementation (Bardach 1979, 5). She accomplished this by facilitating discussions that led to The Agreement, which essentially adjusts the environment, or changes the system, in which the board has made and will make standard recommendations.

Intervening at the final hour to avoid a 2010 initiative was not the first time she had been involved in defining the environment in which humane livestock standards would be defined in the state though. In 2009, she had worked with the Ohio Farm Bureau Federation to draft the initial legislation, then submitted by the resolution’s sponsors in the General Assembly, that created Issue 2 (Lynch November 2010). She had also been an advocate of reaching a compromise between the Humane Society and Ohio agricultural groups in early 2010 – often passing draft compromises between parties – when the two sides of the debate first began considering one after the policy entrepreneur, the egg farmer, reached out the animal welfare group. Perhaps most influentially, though, she pushed for The Agreement by calling Wayne Pacelle and agricultural leaders and asking them to all sit down in a room together to finalize and
formalize a compromise. Her actions played a defining role in preventing a 2010 Humane Society initiative and bought the Ohio Livestock Care Standards Board time to develop and vet standards with producers, consumers and the public alike as the original idea of the board had intended.

As Bardach describes it, such actions are essentially “fixing,” a key aspect of which is “adjusting certain elements of the system of games – which in the aggregate can be thought of as a single massive implementation game played against the policy mandate itself – so as to lead to a more preferred outcome” (Bardach 1979, 274). In Ohio, that preferred outcome was the opportunity to avoid an expensive and potentially divisive initiative campaign in 2010 – a benefit to both agriculture groups and humane farming advocates alike – and the opportunity to see if the Ohio Livestock Care Standards Board, whose creation was supported by the governor and agricultural groups, would work, as “advisory committees” had in other states, to create reasonable, well-considered standards deemed acceptable by consumers, producers and animal welfare activists alike.

As Bardach points out, not everyone who watches the political games that are played to facilitate the development of policy or implementation of legislation is comfortable with the idea of a “fixer.” He highlights that although “game-fixing is quintessentially government by men rather than laws,” it is not “necessarily… irresponsible government” (Bardach 1979, 278). He suggests that there are “legal and customary bounds” that limit the actions of fixers (Bardach 1979, 278). An important part of the “check” on the governor’s advisor’s power to act as a fixer in this case is the
opportunity for future ballot initiatives and the potential of being fired by the governor for taking actions his administration does not support.

EXPERT INFLUENCE

The Ohio Livestock Care Standards Board has also benefited from the involvement of a group of animal science experts. When defining the process through which the board would adopt livestock care standards, the board divided the work among various subcommittees. Each subcommittee except the Technical Research Advisory Committee (TRAC) is tackling the standards that pertain to a specific species. The Technical Research Advisory Committee has six members and is chaired by the state veterinarian (Table 3). Because the members of the committee extensive knowledge in the field of animal science and have experience in evaluating the methodology of scientific research and design research approaches, the committee is a valuable technical party. Admittedly, the TRAC’s members are not entirely neutral: they have ties to both government agencies and institutions and industry through research contracts and research funding. But in the case of their involvement in the board’s standards development, they remain Ohio’s most qualified animal science experts who have applicable knowledge required to advise the other subcommittees and the board about the science, research, and other considerations behind species-specific standard recommendations.

Despite ties to industry, the TRAC has tried to maintain scientific neutrality. Its attempts at neutrality are demonstrated by its dissent with the veal subcommittee. Although the veal subcommittee was one of the first species-specific subcommittees
formed because the treatment of veal was anticipated to be on the Humane Society’s ballot initiative, as of March 2011, standards had yet to be adopted by the board. As of November, the veal subcommittee was reticent to recommend changes to current veal management practices in Ohio, which permit the confinement of veal calves for the majority of any 24-hour period. Humane Society of the United States Ohio State Director Karen Minton revealed that, at that time, the veal subcommittee had yet to hold a vote recommending improved standards be adopted by the board (November 2010).

The improved standards, if recommended to the board, would bring Ohio veal producers’ minimum treatment standards into line with the national-level American Veal Association’s production standards, adopted in 2007, which recommend that veal producers use group housing instead of individual confinement crates for veal calf production (Minton November 2010), a practice that would require Ohio’s veal producers to modify existing facilities and learn new ways to manage their production. Despite the lack of forward progress in defining improved standards for veal production in Ohio or justifying current production practices, the TRAC committee chairman appeared to speak out in opposition of the state’s veal producers when he publicly commented at a Ohio Livestock Care Standards Board meeting that TRAC did not support the tethering of veal calves (Ohio Livestock Care Standards Board Meeting Minutes November 2, 2010).

Ohio’s technical experts have been engaged throughout the board’s efforts. As, essentially, technocrats, the TRAC members have guided discussions toward a more

---

a Although not entirely neutral, the members of the TRAC are also kept from being entirely beholden to agricultural interests who might control research funding by a sense of research integrity. The importance of applying scientific rigor despite funding sources is all the more important to scientific researchers around the world considering the recent revival of media coverage of the integrity failings of one scientists who falsified findings in order to, as is suspected, gain financially. His research, widely discredited, linked childhood vaccinations to the development of autism in children. Dedication to sound science, despite funding sources, remains a powerful motivator.
comprehensive approach instead of limiting policy options, as some experts might favor.

In other states, like Colorado, the experts played an important role in mediating discussions between the Humane Society and agricultural producers prior to a board or advisory committee being established. In Ohio, the experts remain an important part of advising species-specific subcommittees how to organize their research efforts, where to begin their research, and how to make decisions based on the facts available to them.

The TRAC also “screens” subcommittee recommendations to the board and can make recommendations independent of the subcommittees if the opinion of the Technical Research Advisory Committee members differs significantly from the anticipated recommendations from a species subcommittee (Appendix F). Ultimately, however, any choice between a TRAC recommendation and a species subcommittee recommendation is the board’s alone.

<table>
<thead>
<tr>
<th>Table 3. Ohio Livestock Care Standards Board Technical Research Advisory Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dr. Tony Forshey</td>
</tr>
<tr>
<td>Dr. Naomi Brotheras</td>
</tr>
<tr>
<td>Dr. Candace Croney</td>
</tr>
<tr>
<td>Dr. James Kinder</td>
</tr>
<tr>
<td>Dr. Steve Moeller</td>
</tr>
<tr>
<td>Dr. Henry Zerby</td>
</tr>
</tbody>
</table>


The Technical Research Advisory Committee, in a way, can ensure standards are indeed created based on science, as intended by the legislature and approved by the voters, instead of simply based on the persuasiveness of an interest group – either special or public. The board’s species subcommittees often have a higher number of producers compared to concerned citizens, animal ethicists, or food security experts (Minton November 2010), but through the TRAC’s guidance, the subcommittees cannot be
entirely captured by industry interests who may be more focused on protecting farmers from production cost increases than the science behind rearing methods. Instead, the TRAC appears to be using its technical expertise to keep the subcommittees focused on actually addressing the issue of developing humane livestock standards or educating consumers about why the current practices are actually best for a particular species of livestock.

COMPREHENSIVE APPROACH

The Technical Research Advisory Committee also seems to have played an important role in defining how the board chose to approach the development of humane livestock standards. During the June 1, 2010, Ohio Livestock Care Standards Board meeting – the first held after the public listening sessions in May – the Technical Research Advisory Committee suggested two possible approaches to developing livestock care standards in Ohio. First, they suggested that the board address the issues raised in the proposed Humane Society-support ballot initiative; however, the committee noted that, despite the fact that such an approach would allow the board to “get ahead of certain ballot issues” and would be “relatively easy,” the approach would fail to address other potentially “problematic issues” (Ohio Livestock Care Standards Board Meeting Minutes Technical Research Advisory Committee Update June 1, 2010). This approach essentially meant the board would address the development of minimum housing standards for breeding sows, laying hens and veal calves, with an eye toward eliminating or minimizing the possibility of a Humane Society initiative that hoped to outlaw the use of gestation crates and other confinement systems generally accepted as standard
production practices in the pork, egg and veal industries. This approach would be simpler than other approaches since it would limit the amount of decisions the board would be required to consider and the amount of information they would be required to review would be much less than if considering more than just housing practices; however, as TRAC pointed out, one could reasonably anticipate that other animal welfare concerns would need to be considered in the future and that tackling the issue of housing alone would fail to consider the impact of other production practices and common standards.

The second approach TRAC suggested, and officially favored, was the species-specific approach. A species-specific approach would allow the board to address all areas of species care – housing (the major concern of most ballot initiative), feed and water, management, environment, health, transportation and slaughter – but would likely be more time-consuming (Ohio Livestock Care Standards Board Meeting Minutes Technical Research Advisory Committee Update June 1, 2010). This approach was definitely more comprehensive than the first approach, but would also require more time, energy and effort and board member dedication because of the amount of information that would need to be reviewed before standards could be recommended and because of the number of issues that would be considered. Instead of considering how animals are housed, this approach would attempt to address nearly all aspects of animal care.

In the end, the approach Ohio ended up with became a mixture of the two approaches suggested by the Technical Research Advisory Committee. The Ohio Livestock Care Standards Board chose to adopt the second, more comprehensive approach to addressing the issue of farm animal welfare standards in Ohio. However, the
board’s chairman, Ohio Department of Agriculture Director Robert Boggs, emphasized that the board’s priorities should be the proposed ballot initiative’s concerns (Minton November 2010). This emphasis became even more important after The Agreement was signed the summer of 2010. Thus, the Ohio Livestock Care Standards Board has approached the development of humane livestock standards from a species-specific point of view, which has and will allow them to develop more comprehensive standards of care than a ballot initiative focused solely on the housing practices for three species. But the board, under guidance from the board’s chairman and in the spirit of The Agreement, the board has also chosen to address euthanasia standards, the handling of disabled livestock, and the handling of veal calves, swine and laying hens first before moving on to other species. This focus lines up directly with industry and Humane Society concerns about loopholes in existing regulations related to non-ambulatory animals and on-farm euthanasia standards; and the Humane Society’s proposed ballot initiative’s concerns with the extreme confinement of veal calves, laying hens and sows (Minton November 2010).

All people interviewed as part of the author’s research recognized the value in the more comprehensive approach to developing standards of care on farms across Ohio. Even though some had initially opposed the creation of the board or the process that had led to Senate Joint Resolution 6, those asked now viewed it as an important group where consumers and experts in animal behavior, ethics, farming, and food security could address current and anticipated livestock care issues. As the executive director of the Ohio Veterinary Medical Association pointed out, the board members seem sincere in their efforts to address consumer concerns and have created conversation around the topic
of humane livestock standards that veterinarians, producers, consumers and animal activists would have never discussed before (Advent October 2010). The creation of the Ohio Livestock Care Standards Board may have begun as a political maneuver by the General Assembly, pressured by commodity groups in Ohio, to avoid an initiative campaign by animal welfare groups, but the board does not appear to be under the control of commodity groups. In fact, the board appears to have become the kind of body where all interested parties can engage in dialogue about the facts and opinions behind livestock welfare concerns and the potential implications of developing minimum standards different from commonly accepted best management practices.

A CHOIR OF VOICES

By design, the Ohio Livestock Care Standards Board was created to include representation from industry – both traditional and organic agriculture – and public interest groups impacted by changes in minimum livestock treatment standards and from both the Democratic and Republican parties. Unlike some other states, where the creation of the board excluded membership from consumers or animal welfare groups, Ohio’s purposefully includes them. When the Ohio Farm Bureau Federation first took the idea of creating a livestock care standards board to the governor’s office and General Assembly, it had included a suggested list of the kind of positions that should be included on the board (Lynch November 2010). According to the governor’s agricultural policy advisor, the list the Ohio Farm Bureau initially brought was very similar to the positions now on the board. In her opinion, the Ohio Farm Bureau had “genuinely attempted to maximize the expertise and value” on the proposed board so that it could be a body that
would actually address issues of concern to Ohio agriculture and consumers (Lynch November 2010), including protecting the industry in Ohio while addressing consumer demand for more humanely raised animal products and affordable, safe food sources. While the Ohio agriculture and commodity interests played an important role in defining the type of people who would sit on the board, they actually played little, if any, role in influencing who exactly would fill board vacancies. Board members were selected by the governor’s office after nominating themselves through Ohio’s boards and commissions process (Lynch November 2010; Office of the Governor’s Boards and Commissions). Because the governor determines the ultimate membership of the Ohio Livestock Care Standards Board and because anyone with interest in being a board member can apply for an opening position, the process of defining the membership of the board provides more opportunities for access to the political and rulemaking process than a legislative decision would have. By extension, one could argue that since the process is more inclusive the board membership is more representative of the general public than the General Assembly.

Although the initiative process never reached its fullest expression in 2009 or 2010 in Ohio’s debate over farm animal welfare standards, the involvement of certain parties in the campaign for the Issue 2 referendum is illustrative of what type of organizations and agencies would have been engaged in an initiative campaign to create minimum standards. As in other states who faced initiative campaigns, or the threat of them, on the subject of humane farming standards, the primary proponent of adopting restrictions on farm animal confinement and other standard production practices was the Humane Society of the United States. In Ohio, the political action committee Ohioans
for Humane Farms, backed by the Humane Society, officially opposed the 2009 referendum and sponsored the 2010 initiative signature gathering in Ohio (Ohioans for Humane Farms).* On the opposite side of the debate, representing agricultural interests while opposing any initiatives creating minimum standards and supporting the Issue 2 referendum, was Ohioans for Livestock Care. The Ohioans for Livestock Care political action committee worked with Melamed Communications, a leading Ohio political consulting and strategic communications firm, and The Cochran Group, a public relations firm, to lead the campaign in favor of Issue 2’s passage (Reuters December 8, 2009). No influential voices expressing the general public’s opinion, consumer’s opinion, veterinarian, food security, or safety were heard. Instead, the campaign for and against Issue 2 belonged to basically two powerful, well-funded interest groups with the ability to leverage political consultants and public relations firms: the Ohio Farm Bureau Federation and the Humane Society of the United States. Any initiative campaign in Ohio would have likely pitted the same two groups against each other.

Instead, the Ohio Livestock Care Standards Board appears to have mitigated the influence each of these groups on the policy-making process by intentionally including more voices in the discussion. In a way, the careful definition of the kind of members to appoint to the board and the thoughtful selection of the actual people to fill those positions does exactly what Fischer and Berry recommend. The Ohio Livestock Care

* The mainpage of the Ohioans for Humane Farms website included a thank you letter from the Humane Society of the United States’ Wayne Pacelle as of January 8, 2011. Additionally, the “About” sections lists The Humane Society of the United States as an endorser of the political action committee’s ballot measure (Ohioans for Humane Farms, www.ohiohumane.com). Tellingly, The Agreement, which prevented the 2010 ballot measure from being filed, was also signed by The Humane Society of the United States’ Wayne Pacelle, not an Ohioans for Humane Farms representative, and The Humane Society is the group who elected not to file the ballot initiative in Ohio after reaching The Agreement (Minton November 3, 2010; Lynch November 30, 2010)
Standards Board appears to facilitate the inclusion of a broader range of opinions in the policy-making process by increasing opportunities for participation from public interest groups and balancing the influence of special interest groups by carefully defining the problems to be addressed and the values or beliefs that underpin the problems.

Despite this intentional inclusion of multiple interests in the discussions that will address the demand for more humane livestock standards in Ohio, room for improvement in public responsiveness remains. While the author maintains that the board has provided more access to the discussion than the legislative process or the initiative process would have, there is limited evidence that the public comments solicited at each board meeting, subcommittee meeting and listening session have an impact on the board’s discussions, unless the person commenting represents a group already engaged in the rule making process. Certainly, the make-up of the board appears more representative of the various opinions one is likely to find in the general public, taken as a whole, than the halls of the General Assembly, open to well-funded lobbyist, or the initiative process whose campaigns for and against farm animal welfare standards in Ohio pitted animal welfare activists against agricultural establishment interests at the exclusion of less polarizing opinions. However, beyond the verbal assurances of the board’s director that the comments provided are considered by board members (Boggs October 2010), the one occasion that can be cited where something a citizen said may have actually been implemented,* and the fact rules proposed by the board must be submitted to the Joint Committee on Agency Rule Review (JCARR) and therefore undergo periods of public

* During one of the board’s May listening sessions, a person commented that the Department of Agriculture should provide an electronic means through which citizens can submit comments without attending board meetings. Citizens are able to do this through the board’s “Contact Us” page on the public.
comment, the inclusion of comments and opinions of members of the general public seems more symbolic than meaningful. Relying on officially defined, generally accepted notice and written comment periods probably indicates that little “substantive importance” is placed on the inputs (Kerwin and Furlong 2011, 175).

THE BOARD’S DECISIONS

In Ohio, a major fear voiced by those who opposed Issue 2 was that the process that created the Ohio Livestock Care Standards Board was a power play by “big agriculture” and that, once established, the board would be a body that would protect its own agricultural interests through self-regulation. Some people accused the board of being symbolic in nature, designed only to make the public feel good about addressing humane livestock standards while ceding decision-making authority to a technocratic elite and sacrificing democratic principles. While many of the board’s most difficult decisions have yet to be made and the impact of a new gubernatorial administration and future board member selections is yet to be determined, the board has made progress regarding on-farm euthanasia standards, treatment of non-ambulatory animals on the farm, care standards for multiple species, and civil penalties associated with violations (Ohio Livestock Care Standards Board Meeting Minutes February 22, 2011). Euthanasia and civil penalties sections of the standards took effect January 20, 2011, while the sections related to “General Considerations for the Care and Welfare of Livestock” and “Disabled and Distressed Livestock” have been filed with Joint Committee on Agency Rule Review (Ohio Livestock Care Standards Board Meeting Minutes “Draft Livestock Care Standards last modified 28 February 2011” February 22, 2011). As of February 28,
the initial official public comment period on dairy cattle, beef cattle, sheep and goat draft standards was open; and the board unanimously voted February 8 to send draft care standards for swine and laying hens to the initial public comment process (Ohio Livestock Care Standards Board Meeting Minutes February 8, 2011). The board’s actions regarding the development of standards in the cases of swine and veal highlight which interests are “winning,” and who in this public administration problem is getting what. The swine and veal subcommittees’ recommendations and the board’s reaction to them demonstrates the difficulty in finalizing standards, the opposition certain standards face, and how negotiated standards seem to be the way ahead for many of the board’s decisions. Constant pressure from the Humane Society and signatories to The Agreement, as well as inputs from the Technical Research Advisory Committee, continue to guide the board’s primary concerns and move discussions forward.

A look at how the swine care standards were developed reveals how animal welfare and public interests worked with producers to write recommendations. Although the recommended standards have not yet taken effect and some will not take effect until the end of 2025, most parties involved seem satisfied with the compromise, including pork producers and the Humane Society. Public interest groups had key points included in the standards, while producers were able to secure important concessions throughout the discussions held, primarily, at the subcommittee level in 2010. At the December 7, 2010, Ohio Livestock Care Standards Board meeting, the board reviewed the segments of the standards being recommended by the Swine Subcommittee regarding the housing of swine (Ohio Livestock Care Standards Board Meeting Minutes, December 7, 2010). According to the meeting minutes, the board’s review of those recommended standards
involved significant discussion, with the result being that the board members asked the subcommittee to “meet again to refine the recommendations” (Ohio Livestock Care Standards Board Meeting Minutes, December 7, 2010).

The recommendations being considered on December 7 “would allow swine producers already in business, [sic] to essentially be ‘grandfathered’ in, so current farmers could still ‘expand or modify current housing methods’ at existing facilities”; however, The Agreement had specified the “phase-out of all gestation crates by the end of 2025” and did not include a grandfather clause (Kick December 8, 2010). During the public comment period of the December 7 meeting, Karen Minton, the State Director for the Humane Society of the United States, voiced the organization’s opposition to the draft swine housing standards because they conflicted with The Agreement. Additionally, Mr. Jim Chakeres of the Ohio Poultry Association, one of the people who brokered and signed The Agreement, reminded the board of the importance of The Agreement and that the multiple state agriculture groups “stand behind” it (Ohio Livestock Care Standards Board Meeting Minutes, December 7, 2010). Later in December, the Swine Subcommittee met again and voted to remove the exemption from the recommendations that would allow current swine operations to be grandfathered in to any new standards (Kick, December 30, 2010). The revised recommendations, without the grandfather clause, were resubmitted to the board in January 2011. At the full board’s first meeting in 2011, the board expressed unanimous initial approval of the swine standards, and on February 2, the board voted to move the standards to the public comment phase of development. They should be finalized in following months before being submitted for JCARR approval (Kick, January 5, 2011).
By removing the exemption, the committee seems to have bowed to public interest group pressure, despite the State Veterinarian’s statement that stall housing is best for sows (Kick, December 30, 2010). Through the Swine Subcommittee and Ohio Livestock Care Standards Board process, agricultural interests were held accountable to public interests and pressure from animal welfare groups in the development of overall standards; however, agricultural interests were also able to obtain certain concessions from opposition groups – namely the indefinite continued use of farrowing stalls to protect piglets, the use of gestation stalls for limited times to allow “for confirmation of pregnancy,” and the use of individual stalls for swine in “special circumstances” to protect injured, frail, thin or aggressive swine (Kick, January 5, 2011). The process seems to have worked to create standards the major public interest groups and commodity groups can agree are fair and reasonable compromises.

By contrast, as of February 2011, the Ohio Livestock Care Standards Board had yet to adopt the initial rules recommended by the Veal Subcommittee, despite having reviewed them multiple times. The full board first reviewed the Veal Subcommittee’s recommendations in mid-October 2010 and asked multiple follow-up questions about “economic and morbidity and mortality issues of tethering veal calves” to the subcommittee members (Ohio Livestock Care Standards Board Meeting Minutes October 19, 2010). The board again reviewed the draft veal standards on November 2. During the meeting, the Humane Society commented that the draft standards were in conflict with American Veterinary Medical Association guidelines and “prevailing industry standards” (Ohio Livestock Care Standards Board Meeting Minutes November 2, 2010). In addition to the Humane Society’s concerns with the draft standards, the Ohio
Veterinary Medical Association offered support for the “alternative housing” standards presented during the meeting by the Ohio Department of Agriculture staff – standards that were in line with the American Veterinary Medical Association’s veal housing policy. A major Ohio veal producer, who claimed to produce 36,000 of the 46,000 veal calves marketed in Ohio each year, also expressed support for group housing, a practice employed on its farm and at several others in the state (Ohio Livestock Care Standards Board Meeting Minutes November 2, 2010). The board continued its discussion of draft veal standards November 16, when a board member handed out copies of the American Veal Association’s recommendation from May 9, 2007, to move to group housing. After more discussion and public comments, the board passed a motion to accept the alternate veal housing language proposed by the Ohio Department of Agriculture staff earlier in the month by a vote of 7 to 4 (Ohio Livestock Care Standards Board Meeting Minutes November 16, 2010). That housing language, slightly altered, is what appears in the draft livestock care standards last updated February 28, 2011 (Ohio Livestock Care Standards Board Meeting Minutes “Draft Livestock Care Standards last modified 28 February 2011” February 22, 2011). The board was scheduled to discuss the proposed veal standards again February 22 (Ohio Livestock Care Standards Board Meeting Minutes February 8, 2011). Although the board did not have time to discuss the standards at that gathering, during the public comment period a veal producer who is also a member of the Veal Subcommittee “presented the board with signed affidavits from veal farmers, which state that the farmers will exit the veal industry if the currently proposed veal standards are adopted by the board (Ohio Livestock Care Standards Board Meeting Minutes February 22, 2011). The comment prompted one board member to stay he “does not
want to be responsible for putting farms out of business” (Ohio Livestock Care Standards Board Meeting Minutes February 22, 2011). In the case of developing veal standards, agricultural interests and animal welfare groups appear to be unwilling to compromise about mandated dates for converting to new housing practices or what those housing practices should be (Kick, October 26, 2010).

The comment by a board member about not wanting to be responsible for putting farmers out of business may represent a weakness in the Ohio Livestock Care Standards Board standard development process. While recommended standards for other species will undoubtedly have a financial impact on producers of those species, the affidavits from the veal producers represent the most certain negative impact to a producer, if the veal producers make good on their threats if the board adopts the standards currently in the draft rules document. The veal producers who signed affidavits may have just entered a costly game of chicken. They seem to hope that by threatening to leave the veal industry, they will be able to pressure the board into not adopting standards that prohibit the tethering of veal calves. Amending the draft veal standards to prevent producers from voluntarily exiting the market remains a real possibility. However, some veal producers in Ohio support the adoption of alternative housing standards, as does the state and national association of veterinarians and the national-level the American Veal Association. So, the board may favor adopting national standards, despite threats from individual producers to stop farming. The board may also be motivated to adopt alternative housing standards since doing otherwise may nullify The Agreement with the Humane Society. If The Agreement is nullified, the Humane Society and Ohioans for Humane Farms likely continue to have enough public support, as was previously
indicated by polling from both the Ohio Farm Bureau Federation and the Humane Society (Lynch November 2010), to pass a ballot initiative forcing the board to adopt group housing standards for veal calves. Thus, the threat of a ballot initiative remains an important motivator behind the board’s future decisions regarding species-specific care standards. The persuasive influence of the threat of an initiative is demonstrated in the development of swine standards, when the board asked the subcommittee to reconsider its recommendations so that they were in accordance with The Agreement, and now in the development of veal standards, when the board has, at least initially, drafted veal standards that are in accordance with The Agreement despite vocal opposition by a number of veal producers.

GOOD FOR NOW, BUT FACING CHALLENGES

For now, Ohio can be reasonably satisfied that the Ohio Livestock Care Standards Board is not a tool of the agricultural establishment, nor an animal welfare-controlled rulemaking committee. Through the involvement of policy entrepreneurs, a fixer, and people who unwittingly decided a problem-setting approach to the demand and development of humane livestock standards would be better than a divisive initiative campaign that emphasized emotion more than sound decision making, Ohio can be assured that the board is body that has brought a multitude of interests and opinions to the policy-making table, not because it is lucky, but because it is a well-designed bureaucratic body that designed a sound process for exploring and developing livestock standards. The path to engaging all parties meaningfully in the discussion took more than a year and came down to an 11th hour decision, but consumer groups, animal welfare
activists, producers, farmers and food security experts remain engaged in meaningful dialogue about the science behind animal production, the possible impacts of changing production standards, and ethics underpinning arguments in favor of each side of the debate. As Jack Advent, Executive Director of the Ohio Veterinary Medical Association, highlighted, “we didn’t agree with how the board got here, but we’re committed to helping it work” (October 2010). Remaining committed to making it work seems to be the attitude of all of the board members, subcommittee members and interested parties who remain engaged in the efforts to develop standards that industry and public interest groups can support. That commitment will be important as the board’s faces challenges in the future.

One of the most difficult tasks the board faces will be remaining responsive to the public and vigilant about incorporating public opinion and desires into the standards it develops. Throughout the writing of this thesis, general public interest in the topic has waned as the energy of the 2009 referendum has dissipated. Even the state’s major newspapers have decreased their coverage of the board and its activities; the author has routinely had to turn to agricultural-oriented publications for news coverage of the board’s decisions and public reaction to them. As a result of waning public interest, which could be predicted by Olson when he described large groups as generally latent unless motivated to act for a specific gain, the importance of the Humane Society’s continued engagement in the conversation and representation of public interests becomes apparent. Without the Humane Society’s continued vigilance and involvement in expressing public concerns with some agricultural practices during the Ohio livestock care standards development process, the process stands a much higher chance of being
captured by agricultural special interests. An agricultural establishment-captured process would likely amount to a rulemaking process in which animal producers regulated their own industry. What gives the animal welfare group leverage in the process is the knowledge that they could mount an initiative campaign in the state to legislate certain standards and that they likely have enough support for such an initiative to win. The Humane Society remains engaged in the process not only because they are ideologically in favor of better treatment of farm animals, but because they have the leverage and power they need to be heard and heeded by the agriculture groups in Ohio.

The commitment of animal welfare groups, agricultural producer groups, board members and subcommittee members to the standards development process is key. Throughout 2009, the governor’s agricultural policy assistant often intervened to keep communications between agriculture and animal welfare groups going. Once the Board was established, the Director of the Ohio Department of Agriculture took the reins and kept discussions between producers and animal welfare activists moving in a collaborative direction to create standards all parties could get behind. But neither of those individuals are involved in the process anymore, having been replaced by new appointees after Governor John Kasich took office in early January 2010. Because neither shepherd of the process holds the position of influence they once had, the individuals involved in the standards development process thus far, including board members and representatives from public and special interests groups, must judge that they have invested too much in the process to abandon it now in favor of more adversarial development setting like initiative and legislative campaign battles.
That commitment is not guaranteed and the effect the new gubernatorial administration will have on the board’s decisions remains uncertain. In addition to controlling who fills the cabinet-level post of Director of the Ohio Department of Agriculture, and thus is Chairman of the Ohio Livestock Care Standards Board, the new governor will be naming board members as terms expire. As of March 2011, Governor Kasich had not replaced the board members whose terms expired in January, so the only change on the board remained the chairman. Undoubtedly, over time, changes to board membership are unavoidable and there is no guarantee that new appointees will share the same level of commitment to the process as current board members. Still, the threat of an initiative remains a powerful motivator in Ohio and as new board members are named, commodity groups are just as likely to hold the board accountable to the recommendations made in the non-binding Agreement as animal welfare groups in an effort to avoid an initiative. The Agreement enjoys the support of several statewide agricultural groups who view working with animal welfare activists to develop standards based on science more than emotion a better way to make animal husbandry decisions than an emotionally charged initiative battle.

A final challenge the process faces in Ohio is enforcement. The Ohio Department of Agriculture is charged with enforcing the standards currently in development for the various species. The department’s interest in investigating reported violations depends in part upon resources available and political inclination. To negate budget shortfalls, state and local agencies currently expect dramatic budget constraints. In the case of the Department of Agriculture, limited funding may influence the agency’s ability to investigate reported violations. However, producers who are meeting standards have an
interest in seeing other producers comply, to avoid unfair competition, so the industry
groups may become their own regulating agencies in such cases, perhaps invoking a kind
of “censure” on producers who do not comply with Ohio’s farm animal standards.
Additionally, since the governor appoints the director of agriculture, a governor who is
less favorable to government regulation of the private sector may create an environment
in the agency in which inclination to investigate and punish reported violations is low.
However, the potential negative political fallout of people finding out that the
Department of Agriculture knew of but did not investigate reported violations may be too
much to risk, especially considering that an individual motivated to report a violation of
the Ohio Revised Code about animal husbandry standards to the Ohio Department of
Agriculture for investigation is likely motivated to report it to an animal welfare
watchdog group capable of making it headlines in a number of media outlets.

CONSTITUTIONAL PROTECTION?

During the debate in which the legislature drafted the legislative referendum for
voter consideration in 2009, a few opponents voiced their concerns that the Ohio
Livestock Care Standards Board did not need to be in the Ohio Constitution (Ohio House
Session – Part 2 July 13, 2009). Implementing public policy is often about making
incremental changes that can be adjusted so the policy best achieves its stated aims, so
creating a rulemaking body within the constitution makes it difficult to change the
composition of that body in event that it, or the process it designs, is deficient in some
way. Ohio put itself in the situation of creating a bureaucratic agency with broad powers
that might be difficult to amend should it not work as planned; however, in Ohio’s
particular case, the fact that the definition of board membership is in the constitution serves to shield it from shifting political tides and changes in administration. Certainly, the governor still yields considerable influence in making appointments to the board, but a governor who favors fewer regulatory restrictions for the private sector cannot substantially change the number, or kind, of voices on the board. For example, a governor who feels influence from alternative agriculture or animal welfare groups who favor certain restrictions might be detrimental to the animal husbandry industry cannot eliminate those voices from the board’s membership. Nor can a governor stack the board, by increasing its numbers, in favor of the agricultural establishment.

In a way, the fact that the board’s membership is set by the state constitution gives public administrators time to learn about how the processes embraced and the rules adopted by the board work during implementation. The rules are given a chance to take effect without changes in the board’s makeup that might spur adjustments to adopted and implemented standards. Further, much of the decision-making process is being done in subcommittees. Because much of the decision-making process behind the board’s recommended standards occurs outside of the board’s constitutional restrictions, what public administrators learn can be applied to improve upon the process as standards take effect. As a result, the process in Ohio remains somewhat protected from political tides in that the board membership is fixed, but also flexible in that much of the actual decisionmaking is outside of the constitutionally-defined board. Admittedly, making recommendations at the subcommittee level does leave the development of standards vulnerable to agency capture, but because the board’s membership is constitutionally
-defined and because the board chooses subcommittee members, the vulnerability of the process is mitigated.

While some citizens of Ohio may maintain that the Ohio Livestock Care Standards Board is just one more way we are told what to do by an over-reaching bureaucracy or that the board limits true democratic participation, the board now has the responsibility of remaining responsive to the public’s concerns, and those of the agriculture industry, while carrying out the work defined for it in the implementing legislation. It can do that by working to prevent being captured by agricultural or animal welfare activists in its decision-making processes and by continuing to routinely involve all interested parties in working together to develop the “best” solutions for Ohio, whether that be endorsing current livestock management practices or defining more stringent, minimum standards. As the president and chief executive officer of the American Humane Association, an animal welfare interest group entirely distinct from the Humane Society, emphasized after Issue 2 passed in Ohio:

Our experience working with agricultural interests has shown that the most effective reform of animal welfare standards comes when the solutions are not only good for animals, but good for people who buy food and good for farmers, too. …It is least effective when mandated or legislated by outsiders. We think it’s important when farms, large and small, are a part of the solution and voluntarily make good animal husbandry a part of their operating procedures. (American Humane Association November 4, 2009)

The creation of the Ohio Livestock Care Standards Board may look like a power grab to some citizens, especially because it was an idea initially introduced by the state’s Farm Bureau, but the board has become a body where everyone, including the public, can be heard, and may actually create standards that address a wider range of animal welfare concerns than any initiative would have in the state.
IV. INSIGHTS FOR PUBLIC ADMINISTRATORS

The Ohio Livestock Care Standards Board is arguably the most representative and most comprehensive approach to humane livestock standards development when compared to direct democratic processes and traditional legislative approaches to the problem. Across the United States, humane farm animal welfare initiatives have focused on animal housing alone, but the board is chartered to examine multiple aspects of animal care, not just housing. The board, as a bureaucratic entity, is more representative of the general public than the legislature, which tends to be more elite than the public at large, or the interest groups on either side of the argument. As a rulemaking body, the board also provides more access to a greater number of people than the legislative process or the initiative process, both of which are heavily influenced by money. Ohio’s board is a well-balanced board with a well-designed process underlying its decision making; however, a key element of accountability – the threat of an initiative – is not possible in all states. Thus, the board and the processes behind it may only be a sound model for states that permit the initiative.

Perhaps the single most important aspect of Ohio’s model to define industry regulation is involving a wide-variety or people or groups likely to be impacted by the proposed regulations or with an interest in the ethics underlying the rules. Ohio’s process does that reasonably well. In an effort to create regulations that match what public interest groups hope to achieve, while also representing the concerns of special interest
groups, Ohio’s Livestock Care Standards Board invites a wide-variety of people and
groups to be involved in board and subcommittee discussions. In this manner, the
bureaucratic group responsible for defining regulations is left with the latitude to seek out
information from special interest groups, public interest groups, and other administrative
bodies (Kerwin and Furlong 2011, 102), but is also governed by official language
defining the inclusion of certain groups who generally have adversarial relationships. In
this way, Ohio’s regulatory process has attempted to purposefully include public interest
group representation (Berry 1977) in collaborative decision making (Fischer 1990), so
that the process of regulating how animals are raised on farms in Ohio does not become
another example of industry self-regulation (Kolko 1963), which puts economic
competitiveness first and public interest second.

Figure 1 visually represents the major players and the process of developing
livestock regulations in Ohio. Ohio’s regulations, formalized as part of the Ohio Revised
Code and implemented and enforced by the Department of Agriculture, are formally
written by the board. But before they get to the board, these standards are drafted by
people with working-level, practical knowledge of the topic with guidance from scientific
and academic experts. These “technocrats” then submit their recommendations to the
board, the “bureaucrats,” for final adoption and an initial public comment period. After
being adopted by the board, the enforcement agency submits the rules for JCARR review
and a formal public comment period. After review and required revisions, the rules take
effect and are implemented by the regulating agency.

Technocrats, or those with specialized knowledge in the science or practice of
animal husbandry, play an important role in defining the regulations; however, that role is
secondary to the decisions of the board, the bureaucrats. While the technocrats make key recommendations regarding standards, the bureaucrats have the final say on whether those regulations are responsive to both public and special interests before they are submitted for final approval in the legislature. In this way, Ohio’s livestock regulatory process includes the specialized knowledge which helps inform regulations while protecting democratic institutions from the elitist threat of technocratic decision making.

In effect, it seems to balance representative bureaucracy with technocracy.

Figure 1. Ohio’s Livestock Regulatory Process and Key Players

Along the road to defining rules, the public is provided opportunities to comment on the discussions at board meetings, the draft rules being written and rules being submitted for final, formal review. However, the public remains a largely unorganized and latent group and relies heavily on public interest groups to act as proxies. Those
public interest groups are balanced by special interest groups, all of which remain engaged in directly influencing the board’s final standards by providing written and oral comments at meetings and by supplying research that supports the creation of certain standards. Of course, the special and public interest groups also try to indirectly influence the regulatory process by engaging media outlets and public relation firms to publicize each groups’ point of view. These direct engagements with media and public relations professionals indirectly influence both the administrative rulemaking process and the potential initiative process that continues to influence regulatory decision making in Ohio.

FINE-TUNING THE PROCESS

Despite a sound foundation, the Ohio Livestock Care Standards Board will face significant challenges in the near future. Most notably, the board still faces the challenge of making some of its more difficult decisions. It also faces the challenge of remaining relevant and dedicated to a collaborative process after changes in membership begin in 2011 and under a new gubernatorial administration. As such, the board or the processes it had defined may need to be adapted to ensure all interested parties remain engaged in the problem-setting process and the board remains a relevant body in agricultural rulemaking. However, adapting the board will be difficult in Ohio because a constitutional amendment is required to change the board’s original membership, which was also defined in a constitutional amendment. Consequently, shortcomings in the board’s makeup, although not anticipated to affect the board’s relevancy or commitment, will be difficult to change. On the other hand, as seems to be the case in Ohio, enshrining
the rulemaking agency in the constitution seems to be protecting it from changes to the
gubernatorial administration, which shifted from a Democrat who sought out
collaborative decision-making opportunities to a Republican who favors fewer
regulations on private industry. Fortunately, despite the constitutional constraints on the
board’s work, many of the rulemaking processes the board has adopted remain outside of
the constitutional mandate, and so remain flexible and adaptable. However, these
processes then become susceptible to shifts in the political landscape. For both reasons –
because the board membership is relatively unchangeable if it is needs amended and
because the processes below the board level remain susceptible to agency capture –
keeping public interest groups and citizens engaged will require innovative approaches
under traditional feedback and public involvement constructs.

To that end, the Department of Agriculture must do a better job of reaching out to
the public to engage them in the feedback process. While they have done so in a limited
fashion, their efforts are concentrated on formal feedback mechanisms and attendance at
meetings and venues where agricultural groups are likely to make up the majority of the
audience. To truly solicit genuine public feedback on the process and the draft standards,
the Department of Agriculture must develop more innovative communication strategies
to explain the potential impact of draft regulations on the consumer or the reasoning
behind certain decisions. The Ohio State University extension service has already
created a position dedicated to educating the public about livestock care standards board
decisions, but more could be done to engage food security advocacy groups, hobby
farmer networks, and alternative agriculture groups in educating the public about board
decisions. Doing so may create feedback avenues that help clarify how accurately the
mobilized public interest proxy group is portraying public interests and impact a producer’s attitude about adopting new, or fighting for old, standards. In general, more feedback from the public – producer and consumer alike – and not just public or special interest groups creates dialogue that broadens the knowledge of the participants creating regulations and potentially helps create buy-in for a negotiated regulatory process by establishing common ground.

Creating public awareness about the board’s decisions may also reinforce weaknesses in the enforcement process. At present, the amount of effort expended in investigating reported violations of state statutes regarding livestock husbandry is dependent on the resources allocated to investigations and the political climate of the regulating agency. While both can be expected to ebb and flow over time with changes in economic situations and political administrations, educating the public cannot hurt enforcement efforts. Public understanding of the exact roles and responsibilities of the regulating agency may influence it to take action where it might otherwise have remained inactive. Similarly, public knowledge about what the standards are and what they mean to consumers and producers can also serve to motivate producer compliance. Leadership of commodity groups dedicated to hearing the public’s concerns, as brought to light through the negotiated regulation process, may see the benefit in complying with regulations that accurately reflect public interests. In many cases, an engaged public is paramount to government accountability.

PUBLIC INPUT VIA DIRECT DEMOCRACY

In certain circumstances, the government – whether it be the body creating regulations or the agency enforcing them – may become unresponsive to the public. In that
case, the public may choose to take governance into their own hands and initiate a campaign to create certain legislation through direct democracy. In Ohio, direct democracy has played and continues to play an influential role in the regulatory process.

The process that led to the creation of the Ohio Livestock Care Standards Board and Ohio’s 2009 legislative referendum, Issue 2, demonstrated the influence money has on direct democracy. Essentially, the 2009 referendum campaign pitted Ohioans against “outsiders” who threatened to destroy Ohio agriculture. The potential 2010 initiative campaign would have pitted the two well-funded extremes – traditional agriculture and animal welfare groups – against each other again, forcing the public to choose between two emotionally charged campaigns and eliminating any chance to find middle ground. In some ways, then, and as the process played out in 2009 and 2010 in Ohio, direct democracy seems no less susceptible to special or public interest capture than the legislative process.

As Ohio is demonstrating, establishing a bureaucratic agency and giving all substantial interests, including the public, access to it and its membership mitigates the influence of interest group funding of campaigns by limiting emotional appeals that can influence the rulemaking and policy processes. Certainly, the interest groups with the upper hand in the legislative and direct democratic processes maintain important access and influence to the bureaucratic agency, but this is often because they are the very groups with the specialized information the bureaucratic groups need to inform their decisions and recommendations. However, the board also affords access to other experts, like academics, who might otherwise not have contributed information to the decision-making process, and to the general public, who often lacks the time, money or personal connections required to truly be heard by legislators or to build or maintain the necessary
support and momentum to become a meaningful player in the political process. In this way, a well-established advisory council or bureaucratic agency can balance the expert knowledge provided by technocrats with the values expressed by the public. Expertise is often necessary when there is no easy policy solution, but a complete reliance on technocrats with specialized knowledge amounts to government by the elite and can jeopardize democratic values. To protect them, the board must remain accountable to the public.

Accountability to the public may be difficult because the public’s opinion may be hard to hear. As Olson points out, the public at large can often act as a latent group with little or no motivation to act in its own interest. Because of this, the best way to ensure public accountability may be through a proxy group. In Ohio, the board members are held accountable to considering public values and avoiding special interest capture by the Humane Society, which maintains a near-constant presence at the board’s meetings. Its influence has been formalized in The Agreement, which prevents the board from being captured by agricultural interests and makes the public interest group’s goals clear, and the residual threat of an initiative from animal welfare groups should The Agreement become null. By no means is a similar “contract” feasible in all policy solution discussions, nor is such a powerful public interest group always going to be involved, so more must be done to encourage participation directly by the general public and, once encouraged, the participation must not be written off by policymakers or those implementing the policies. Like the Ohio Livestock Care Standards Board process, much of the public participation in policy and rulemaking processes is confined to opportunities for public comment at board meetings, committee meetings and during the more formal
rules review process. Often, these public comments fall on deaf ears and the process of actually permitting public comment seems more symbolic than substantive. Rulemakers and policy makers must make a greater effort to listen for, hear, and consider public comments through the informal and formal stages of rulemaking.

NEGOTIATED REGULATION

Despite the challenges laid forth in this paper, the Ohio Livestock Care Standards Board can offer unique lessons for public administrators facing difficult problems, problems with no easy solutions, numerous interests and interest groups vying for relevance and divergent end goals, and a wide range of policy primary and secondary impacts. As Kerwin and Furlong point out, “when rulemakings require complex and varied information and affect multiple interests, and when consensus in decisions is important, this function may be given to a work group or task force” (2011, 144). Creating a task force to examine a problem does not necessarily mean the task force will have success in creating rules that all parties can agree on. Playing off Fischer, who defined the importance of problem setting and inviting all interests to join the discussion in public policy making (Fischer 1990), and Berry, who argues governments should facilitate the access public interest groups have to legislative and executive processes (Berry 1977), Kerwin and Furlong note that “negotiated rulemaking depends in large part on the ability to identify and invite to the table all the substantially affected interests” (2011, 206). What sets Kerwin and Furlong apart from Fischer and Berry is one final argument: “rules that present conflict over deeply held values are not candidates for negotiation” (Kerwin and Furlong 2011, 206). Ohio’s Livestock Care Standards Board
offers proof that even groups with fundamentally divergent interests can work together in an advisory council or task force to facilitate compromises and to create rules or policy options that all parties can support. Although the interests of agricultural establishment groups fundamentally diverge from animal welfare groups – with one group ultimately concentrating on providing low-production-cost food for the market and the other group pushing for increased awareness and attention to an animal’s mental and physical well-being – both sides have demonstrated a preference for participatory rulemaking where the reasons behind various practices can be examined, discussed, and adopted or amended based on the best available knowledge, and where public education can ultimately be the recommendation so that citizens at large can understand more about why certain standards are acceptable or not. This preference for working together to solve potentially divisive public problems offers hope to federal, state and local administrations that policy making and rulemaking need not always be adversarial. Furthermore, it supports the concept that increasing the access of public interest groups to the policy making process by inviting them to the table frequently already occupied by special interests can result in more, and better, policy options.

Bringing the right groups, people and interests to the table becomes even more important when one considers the enforcement power of some bureaucratic agencies and advisory councils is limited at best. As is the case with the Ohio Livestock Care Standards Board, many policymaking bodies must rely on others to enforce the rules or standards they adopt. In many cases, the agricultural groups currently involved in efforts to limit changes to current practices are the same groups who will enforce the board’s recommendations. This is not a unique situation in industry regulation. The groups
expected to be affected most by policy changes often essentially enforce rules and standards. Thus, getting buy-in early from those interests who are required to enforce standards becomes important. Buy-in is also important when other parts or levels of government are expected to become enforcement agents. Representatives of all of these enforcement agencies must be brought to the table alongside other groups with an interest in the policy problem.

Bureaucratic rulemaking, with its reliance of technocratic expertise and interest groups for information, can certainly become a highly undemocratic process. But when government executives work together with interest groups and the public to create advisory councils and rulemaking bodies that purposefully bring together a wide variety of groups and individuals with a substantive interest in a given policy problem, these rulemaking bodies may represent government’s best chance at developing sound policy based on scientific evidence and public preferences.
APPENDIX A
METHODOLOGY

The research approach for this paper began as a comparative case study. The author examined what other states had or were developing and implementing humane livestock standards, how the discussion about developing such standards began in those states, who the major players or interest groups supporting or opposing such standards were, and the process by which standards were being developed or implement. After a brief survey of 18 states, the author narrowed her research to states whose development or implementation of humane livestock treatment standards influenced the call for such standards in Ohio or whose process, or proposed process, for defining standards differed significantly from or was most similar to Ohio’s proposed process. The narrowing of her research led her to focus on: Florida, who was the first state to adopt minimum livestock standards in 2002 through a citizen-initiated constitutional amendment; Arizona, who passed a ballot initiative outlawing certain practices in 2006; Oregon, whose legislature passed legislation in 2007 that outlawed similar practices; California, where the Humane Society won a high-profile popular initiative in 2008 despite strong opposition of agricultural interests in the state; Colorado, who relied on a neutral negotiator to broker a deal between animal welfare groups and agricultural groups to avoid a ballot initiative while, via the legislature, banning certain confinement practices and establishing a bureaucratic body to address future livestock standard concerns; and Michigan, where elected leaders in the executive and legislative branches worked out a compromise between the Humane Society and agricultural groups that restricted confinement practices and created an advisory council to address future farm animal welfare issues. The brief
examination of these various states’ processes for addressing the development of humane livestock standards was used to inform the detailed survey of the interest groups and people integral to the creation of the Ohio Livestock Care Standards Board and the process by which the board is adopting minimum standards to govern livestock care in Ohio.

The survey of Ohio involved reading the testimony given to the Ohio House Agriculture and Natural Resources Committee and Senate Agriculture Committees prior to the passage of Senate Joint Resolution 6, which placed Issue 2 on the ballot for public approval in November 2009, and prior to the passage of House Bill 414, the implementing legislation following the successful legislative referendum, in early 2010. Additionally, the author read the letters to the editor and opinion and editorial pieces from four of Ohio’s top newspapers – The Blade (Toledo), The Columbus Dispatch, Dayton Daily News, and The Plain Dealer (Cleveland) – in order to gauge the types of groups interested and invested in the debate about how the process of developing standards in Ohio should work. To inform her understanding of how the Ohio Livestock Care Standards Board came to be and how the board was addressing the creation of farm animal treatment standards, the author also conducted interviews with 10 people intimately involved in the creation of the board and the process by which the board is creating standards (Table 4). Although the majority of the author’s interviews were conducted on the phone, the author had previously established lines of communication with many of the interviewees when she attended a board listening session to observe the process and kinds of comments expressed in the summer of 2010.
The foundation for the method of inquiry rested on an understanding of when and why regulated industries initiate regulation (Kolko 1963; Edelman 1985), the roles of interest groups in policy and regulation (Berry 1997), the provision of collective goods and incentives (Olson 1965), the importance of problem setting in public policy (Fischer 1990), the representative role of bureaucrats in decision making (Fritschler 1996), and the influence of “fixers” in the policy process (Bardach 1979).

Table 4. People with Whom the Author Conducted Interviews

<table>
<thead>
<tr>
<th>Name</th>
<th>Title(s)</th>
<th>Date (contact method)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robert Boggs</td>
<td>Ohio Livestock Care Standards Board (OLCSB) Chairman and Ohio Department of Agriculture Director</td>
<td>Oct. 1, 2010 (phone)</td>
</tr>
<tr>
<td>Lisa Hamler-Fugitt</td>
<td>OLCSB member (consumer representative)</td>
<td>Oct. 1, 2010 (phone)</td>
</tr>
<tr>
<td>Stacey Atherton</td>
<td>OLCSB member (family farmer representative)</td>
<td>Oct. 11, 2010 (phone)</td>
</tr>
<tr>
<td>Michelle Holdgreve</td>
<td>Ohio Veterinary Medical Association Government Relations Director</td>
<td>Oct. 13, 2010 (phone)</td>
</tr>
<tr>
<td>Jack Advent</td>
<td>Ohio Veterinary Medical Association Executive Director</td>
<td>Oct. 13, 2010 (phone)</td>
</tr>
<tr>
<td>Keith Stimpert</td>
<td>Ohio Farm Bureau Federation Senior Vice President for Public Policy</td>
<td>Oct. 13, 2010 (phone)</td>
</tr>
<tr>
<td>Karen Minton</td>
<td>The Humane Society of the United States Ohio State Director</td>
<td>Nov. 3, 2010 (phone)</td>
</tr>
<tr>
<td>Anonymous</td>
<td>Ohio General Assembly Staffer</td>
<td>Nov. 19, 2010 (phone)</td>
</tr>
<tr>
<td>Dick Isler</td>
<td>Ohio Pork Producers Council Executive Vice President</td>
<td>Dec. 1, 2010 (in person)</td>
</tr>
</tbody>
</table>
# APPENDIX B

**CAMPAIGN CONTRIBUTIONS FROM AGRICULTURAL OR AGRICULTURE-RELATED INDUSTRIES BY DOLLAR AMOUNT AND AS PERCENTAGE OF TOTAL CONTRIBUTIONS FOR SELECT MEMBERS OF 111TH U.S. CONGRESS**

<table>
<thead>
<tr>
<th>MEMBER</th>
<th>INDUSTRY</th>
<th>Total Contributions from Agriculture or Agriculture-Related Industries</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Crop Production and Forestry</td>
<td>$688,775.59</td>
</tr>
<tr>
<td></td>
<td>Agricultural Products/Services</td>
<td>$341,097.00</td>
</tr>
<tr>
<td></td>
<td>Food Processing and Sales</td>
<td>$206,011.00</td>
</tr>
<tr>
<td></td>
<td>Dairy</td>
<td>$167,001.00</td>
</tr>
<tr>
<td></td>
<td>Livestock</td>
<td>$20,001.00</td>
</tr>
<tr>
<td></td>
<td>Poultry and Eggs</td>
<td>$12,001.00</td>
</tr>
<tr>
<td></td>
<td><strong>Total Contributions from Agriculture or Agriculture-Related Industries</strong></td>
<td>$1,235,894.00</td>
</tr>
<tr>
<td></td>
<td>Colleen Hanabusa (D-Hawaii)</td>
<td>$156,666.00</td>
</tr>
<tr>
<td></td>
<td>House Committee on Agriculture (Chair)</td>
<td>$156,666.00</td>
</tr>
<tr>
<td></td>
<td>Tim Hagan (D-Ohio)</td>
<td>$40,750.00</td>
</tr>
<tr>
<td></td>
<td>House Committee on Agriculture (Vice Chair)</td>
<td>$40,750.00</td>
</tr>
<tr>
<td></td>
<td>House Committee on Agriculture (Ranking Minority Member)</td>
<td>$40,750.00</td>
</tr>
</tbody>
</table>

*Data includes contributions from 2009-2010. 'x' indicates the industry was not reported as one of the member's top 35 donors.*

Source: Center for Responsive Politics (www.opensecrets.org)
APPENDIX C
ORIGINAL OHIO LIVESTOCK CARE STANDARDS BOARD MEMBERS

Robert Boggs, Chairman of the Board
Mr. Boggs is the director of the Ohio Department of Agriculture. He previously served as a state representative, state senator and county commissioner. He has a master’s in public administration from Kent State University.

Tony Forshey, State Veterinarian
Dr. Forshey is the State Veterinarian for the Ohio Department of Agriculture. He is the chairman of the Ohio Veterinary Medical Association Swine Sub-Committee to the Ohio Department of Agriculture and co-chairman of the Swine Update Program in the Department of Preventative Medicine at The Ohio State University. He received his doctorate of veterinary medicine from The Ohio State University.

Leon Weaver, veterinarian
Dr. Weaver is the owner-operator of Bridgewater Dairy, and a board member for the Ohio Livestock Coalition and the Ohio Dairy Industry Forum. He previously taught at the University of California’s Veterinarian Medicine School. He received his doctorate of veterinary medicine from the University of Pennsylvania.

Jeff Wuebker, statewide farm organization representative
Mr. Wuebker is the co-owner of Wuebker Farms. He is also president of the Ohio Soybean Association and a member of the Ohio Corn Growers Association and Ohio Cattlemen’s Association.

Bobby Moser, agriculture dean
Dr. Moser is the vice president for agriculture and the dean of the college of Food, Agricultural, and Environmental Sciences at The Ohio State University. He was previously the associate dean of agriculture and extension program director at the University of Missouri and a professor at the University of Nebraska.

Jeffrey LeJeune, food safety expert
Dr. LeJeune is an associate professor for Food and Animal Health at the Ohio Agricultural Research and Development Center at The Ohio State University, where he is also the chair of the Agriculture Animal Care and Use Committee.

Harold Dates, county humane society representative
Mr. Dates is the president and CEO of the Society for the Prevention of Cruelty to Animals of Cincinnati.

Jerry Lahmers, statewide farm organization representative
Dr. Lahmers is the owner-operator of a family farm and a veterinarian. He previously served as the president of the Tuscarawas County Farm Bureau and was a member of the Ohio Veterinary Medical Licensing Board. He received his doctorate of veterinary medicine from The Ohio State University.
Lisa M. Hamler-Fugitt, consumer
Ms. Hamler-Fugitt is the executive director of the Ohio Association of Second Harvest Foodbanks and legislative liaison for the Ohio Alliance of Boys & Girls Clubs. She was previously the public policy director for the Ohio Hunger Task Force.

Robert Cole, consumer
Mr. Cole is a retired U.S. Department of Agriculture employee, where he was the executive director of the USDA’s Franklin County Office and acting state director, and helps manage his family farm in Mississippi.

Stacey Atherton, family farmer
Ms. Atherton is co-owner of Shipley Farms, where she previously served as manager. She is a 4-H club advisor and member of the Ohio Dairy Producers and the Ohio Farm Bureau.

Bill Moody, family farmer
Mr. Moody is the board member appointed by the Ohio Senate President. He is the former assistant director of the Ohio Department of Natural Resources, and farms a small commercial sheep and hay farm.

Dominic Marchese, family farmer
Mr. Marchese is the board member appointed by the Ohio Speaker of the House. He is the owner-operator of the certified organic Manna Farms. He formerly raised dairy cows, and now raises beef cattle, chickens and hay.

(Source: http://www.ohiolivestockcarestandardsboard.org/content/board/about_board.aspx)
APPENDIX D
SUMMARY OF PUBLIC ORAL AND WRITTEN COMMENTS FROM OHIO LIVESTOCK CARE STANDARDS BOARD MEETINGS,
JUNE 15 TO NOVEMBER 2, 2010

Figure 2. Summary of Public Oral and Written Comments from Ohio Livestock Care Standards Board Meetings, June 15 to November 2, 2010

<table>
<thead>
<tr>
<th>Meeting date</th>
<th>Organization/Individual providing comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 15, 2010</td>
<td>Ohio Department of Agriculture Division of Meat Inspection</td>
</tr>
<tr>
<td></td>
<td>Ohio Farm Bureau Federation</td>
</tr>
<tr>
<td></td>
<td>U.S. Department of Agriculture</td>
</tr>
<tr>
<td></td>
<td>Ohio Federated Humane Societies</td>
</tr>
<tr>
<td>June 29, 2010</td>
<td>Ohio Ecological Food and Farm Association</td>
</tr>
<tr>
<td></td>
<td>Animal Welfare Institute</td>
</tr>
<tr>
<td>July 27, 2010</td>
<td>cattle farmer</td>
</tr>
<tr>
<td></td>
<td>Ohio Pork Producers Council</td>
</tr>
<tr>
<td></td>
<td>cattle farmer</td>
</tr>
<tr>
<td></td>
<td>Ohio Poultry Association</td>
</tr>
<tr>
<td></td>
<td>Ohio Farm Bureau Federation</td>
</tr>
<tr>
<td></td>
<td>Ohio Cattlemen’s Association</td>
</tr>
<tr>
<td></td>
<td>cattle farmer</td>
</tr>
<tr>
<td>August 10, 2010</td>
<td>Ohio Ecological Food and Farm Association</td>
</tr>
<tr>
<td></td>
<td>swine producer</td>
</tr>
<tr>
<td></td>
<td>Humane Society of the United States</td>
</tr>
<tr>
<td>August 24, 2010</td>
<td>Humane Society of the United States</td>
</tr>
<tr>
<td></td>
<td>volunteer signature gatherer (Ohioans for Humane Farms)</td>
</tr>
<tr>
<td>September 7, 2010</td>
<td>Ohio Farm Bureau Federation</td>
</tr>
<tr>
<td>October 5, 2010</td>
<td>Ohio Poultry Association</td>
</tr>
<tr>
<td></td>
<td>Ohio Veterinary Medical Association</td>
</tr>
<tr>
<td></td>
<td>Ohio Farm Bureau Federation</td>
</tr>
<tr>
<td></td>
<td>Mercy for Animals</td>
</tr>
<tr>
<td></td>
<td>Humane Society of the United States</td>
</tr>
<tr>
<td></td>
<td>retired livestock farmer</td>
</tr>
<tr>
<td>October 19, 2010</td>
<td>signature gatherer (Ohioans for Humane Farms)</td>
</tr>
<tr>
<td></td>
<td>veal subcommittee member</td>
</tr>
<tr>
<td></td>
<td>Ohio Veterinary Medical Association</td>
</tr>
<tr>
<td></td>
<td>Ohio Farm Bureau Federation</td>
</tr>
<tr>
<td>November 2, 2010</td>
<td>Ohio Veterinary Medical Association</td>
</tr>
<tr>
<td></td>
<td>Humane Society of the United States</td>
</tr>
<tr>
<td></td>
<td>American Veal Association</td>
</tr>
<tr>
<td></td>
<td>veal producer (Buckeye Veal Services)</td>
</tr>
<tr>
<td></td>
<td>Technical Research Advisory Committee member</td>
</tr>
<tr>
<td></td>
<td>Ohioans for Humane Farms volunteer</td>
</tr>
<tr>
<td></td>
<td>&quot;big agriculture&quot; group</td>
</tr>
<tr>
<td></td>
<td>&quot;alternative agriculture&quot; or other group</td>
</tr>
<tr>
<td></td>
<td>uncategorized individual</td>
</tr>
</tbody>
</table>

(Source: Ohio Livestock Care Standards Board Meeting Minutes, http://www.ohiolivestockcarestandardsboard.gov/content/news/mminutes.aspx)
APPENDIX E
“THE AGREEMENT”

We, the undersigned organizations and individuals, agree to the below undertakings and will work to complete the undertakings by any time specified in the agreement:

1) Recommendations will be made to The Ohio Livestock Care Standards Board (OLCSB) to take action on issues related to downer cattle and humane euthanasia using language consistent with the proposed ballot initiative.

2) The Ohio Department of Agriculture (ODA) and the Ohio Department of Natural Resources will coordinate and take action on wild and dangerous animals including the prohibition of the sale and/or possession of big cats, bears, primates, large constricting and venomous snakes and alligators and crocodiles. Existing owners will be grandfathered in, but they could not breed or obtain new animals.

3) Recommendations will be made to the legislature to support and pass SB 95 largely in the current form, which regulates dog breeding kennels.

4) Recommendations will be made to the legislature to support and pass HB 108, which will increase penalties on individuals who engage in cockfighting.

5) Recommendations will be made to the OLCSB to adopt the American Veal Association 2007 agreement to transition to group housing for veal calves by 2017.

6) Humane Society of the United States (HSUS) will issue a statement in support of the mission and purpose of the OLCSB and will engage and work with the Board. Organizations representing Ohioans for Livestock Care and the HSUS will examine and jointly fund independent research projects and studies to identify best practices and to work for the highest farm animal care and welfare standards. If assistance of a third party is needed they will jointly agree on a representative to help in these discussions. When this work is complete, the findings will be presented to the OLCSB.

7) Recommendations will be made to the OLCSB for hog producers to phase out the use of gestation stalls by December 31, 2025. By that date sows must be housed using alternative systems. After December 31, 2010, any new facilities must utilize alternative sow housing (not gestation stalls). It is understood that in all housing systems, sows may be housed in breeding/gestation stalls until they are confirmed pregnant.
8) Recommendations will be made to the OLCSB to adopt standards to instruct ODA to deny permits of new egg facility applicants, based on current permitting standards that call for the use of battery cages. This standard will be in effect for the life of this agreement. This provision does not preclude any Ohio farm from expanding or modifying existing permits, using current housing methods at the existing facility.

9) HSUS will not initiate litigation (nuisance or otherwise) to attempt to use legal process to obtain the same ends as articulated in the ballot initiative in Ohio through the life of this agreement. HSUS will not fund, advise or otherwise support other organizations to move forward in their place.

10) The HSUS will not submit a constitutional amendment on animal welfare in 2010 to the Ohio Secretary of State. Failure to implement the provisions related to wild and dangerous animals or the reforms recommended to the OLCSB by December 31, 2010 could void the agreement and allow the HSUS to pursue a ballot initiative whenever it chooses. However, if the terms of this agreement are met and implemented to the satisfaction of all parties, the agreement will extend to January 1, 2014. At that time the agreement shall be extended through January 1, 2017, and subsequently through January 1, 2020, if the terms continue to be met, and implemented to the satisfaction of all parties, and no party shall unreasonably withhold its consent to the extensions. Any future pursuit of a ballot initiative by HSUS could nullify the limitation on gestation stall or battery cage facilities until and unless other lawful prohibitions come to exist.

______________________________
Governor Ted Strickland, State of Ohio
July 21, 2010

______________________________
Jim Chaires, Ohio Poultry Association
July 7, 2010
(Source: Karen Minton, Ohio State Director for The Humane Society of the United States, in discussion with the author, November 2010, in discussion with the author.)
Figure 3. Ohio Livestock Care Standards Board’s Process Design for Standard Development

(Source: http://www.ohiolivestockcarestandardsboard.gov)
REFERENCE LIST


Advent, Jack (Executive Director of the Ohio Veterinary Medical Association), October 2010, in discussion with the author.


Arizona Revised Statute §§ 13-2910.07 – 13-2910.08


Atherton, Stacey (Ohio Livestock Care Standards Board member representing family farmers), October 2010, in discussion with the author.


Boggs, Robert (Director of the Ohio Department of Agriculture and Chairman, Ohio Livestock Care Standards Board), October 2010, in discussion with the author.


California Health & Safety Code Section 25990-25994.


*Colorado Farm Bureau News*. May 20, 2008. “Governor Signs SB 201 into Law.”


*DVM Newsmagazine*. June 28, 2009. “OVMA calls for more veterinarian representation on Ohio livestock board.”


Isler, Dick (Ohio Pork Producers Council, executive vice president), December 1, 2010, in discussion with the author.


Kentucky Revised Statutes Chapter 257.192


Lynch, Jennifer (Executive Assistant for Agriculture, Environment, Energy, Utility and Insurance Policy), November 2010, in discussion with the author.


Michigan Compiled Law Section 287.246.


Minton, Karen (Ohio State Director, Humane Society of the United States), November 2010, in discussion with the author.

Nash, James. October 23, 2009. “Gambling interests ante up to promote Issue 3: Backers spent $32 million since July; its foes, $5.4 million.” *The Columbus Dispatch*.


Ohio Constitution, Article XIV Section 1(A)


Ohio General Assembly. 2009. *Proposing to enact Section 1 of Article XIV of the Constitution of the State of Ohio to create the Ohio Livestock Care Standards Board*. SJR 6, 128th General Assembly.


Ohio Livestock Care Standards Board Meeting Minutes, June 1, 2010. 


Ohio Livestock Care Standards Board Meeting Minutes, October 19, 2010. 

Ohio Livestock Care Standards Board Meeting Minutes, November 2, 2010. 

Ohio Livestock Care Standards Board Meeting Minutes, November 16, 2010. 

Ohio Livestock Care Standards Board Meeting Minutes, December 7, 2010. 

Ohio Secretary of State, November 3, 2009, State Issue 2 Official Results, 

Ohio Secretary of State, “Profile Ohio: Ohio Agriculture,” accessed November 11, 2010, 
http://www.sos.state.oh.us/SOS/ProfileOhio/OhioAgriculture.aspx.


Stimpert, Keith (Ohio Farm Bureau Federation Senior Vice President of Public Policy), October 2010, in discussion with the author.


West Virginia Code Chapter 19 Section 19-1C-1.


OTHER WORKS CONSULTED


Hamler-Fugitt, Lisa M. (Ohio Livestock Care Standards Board member representing consumers), October 2010, in discussion with the author.


Michigan State University Animal Legal & Historical Center. www.animallaw.info.


Referendum Campaigns, eds. Matthew Mendelsohn and Andrew Parkin, 47-64. New York: Palgrave.


The Ohio State University Agricultural & Resource Law Program. aede.osu/edu/programs/aglaw.


